

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC MAIL SECTION

JUN 27 11 00

In the Matter of)
Amendment of the Commission's Rules)
Regarding Installment Payment Financing for)
Personal Communications Services (PCS))
Licensees)
) WT Docket No. 97-82
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)
)

FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: May 31, 2000

Released: June 7, 2000

Comments Due: June 22, 2000
Reply Comments Due: June 30, 2000
Final *Ex Parte* and Other Presentations Due: July 12, 2000

By the Commission: Commissioner Powell concurring and issuing a statement.

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I. INTRODUCTION AND OVERVIEW

1. On January 12, 2000, the Wireless Telecommunications Bureau (“Bureau”) announced that a broadband Personal Communications Services (“PCS”) C and F block auction – Auction No. 35 – would begin on July 26, 2000.¹ Under the Commission’s current rules, applicants for C and F block auctions must meet specified financial size requirements to qualify as “entrepreneurs” and to be eligible to compete in the auction.² Following the announcement of Auction No. 35, the Commission received several formal requests to waive, modify, or eliminate various C and F block auction and service rules.³

¹ “Auction of C and F Block Broadband PCS Licenses, Notice of Auction Scheduled for July 26, 2000,” *Public Notice*, 15 FCC Rcd 693 (2000).

² See 47 C.F.R. § 24.709; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket 93-253, *Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403 (1994) (“*Competitive Bidding Fifth Memorandum Opinion and Order*”), *Fifth Report and Order*, 9 FCC Rcd 5532 (1994) (“*Competitive Bidding Fifth Report and Order*”).

³ See Verizon Wireless, Petition for Clarification or Reconsideration (April 17, 2000) (“Verizon Petition”); “Wireless Telecommunications Bureau Sets Comment Schedule for Petitions for Reconsideration of the on Reconsideration of the Fourth Report and Order in WT Docket No. 97-82,” *Public Notice*, DA 00-760 (released April 5, 2000); US WEST Wireless, LLC and Sprint Spectrum L.P. dba Sprint PCS, Petition for Reconsideration (Expedited Action Requested) (April 4, 2000) (“US West/Sprint Petition”); US WEST Wireless, LLC, Petition for Waiver (March 1, 2000) (“US West Petition”); Cellular Telecommunications Industry Association, Petition for Rule Making of the Cellular Telecommunications Industry Association (February 22, 2000) (“CTIA Petition”); Sprint Spectrum L.P. dba Sprint PCS, Sprint PCS Petition for Waiver (February 22, 2000) (“Sprint Petition”); “Extension of Filing Deadline for comments to the Petitions Filed by SBC Communications Inc. and Nextel Communications, Inc. Regarding PCS C and F Block Rules,” *Public Notice*, 15 FCC Rcd 2814 (2000); Rural Cellular Association, Request for Extension of Time (February 9, 2000); Office of Advocacy of the United States Small Business Administration, Request for Additional Time to File Comments (February 7, 2000); National Telephone Cooperative Association, National Telephone Cooperative Association Expedited Request for Extension of Filing Deadline for Comments to SBC Communications Inc.’s and Nextel Communications, Inc.’s Request for Waiver of the Commission’s Rules (February 4, 2000); Wireless Telecommunications Bureau Seeks Comment on Nextel Communications, Inc.’s Petition Regarding PCS C and F Block Spectrum, Extension of Filing Deadline for Comments to SBC Communications Inc.’s Request for Waiver,” *Public Notice*, 15 FCC Rcd 2104 (2000); Nextel Communications, Inc., Petition for Expedited Rulemaking or, in the Alternative, Waiver of the Commission’s Rules (January 31, 2000) (“Nextel Petition”); “Wireless Telecommunications Bureau Seeks Comment on SBC Communications Inc.’s Request for Waiver of the Eligibility Requirements for Participation in the Upcoming PCS C and F Block Auction,” *Public Notice*, 15 FCC Rcd 1953 (2000); SBC Communications Inc., Petition of SBC Communications Inc. for a Waiver of Section 24.709 and for Expedited Action, (January 21, 2000) (“SBC Petition”). The Commission also received petitions primarily concerning the Commercial Mobile Radio Service spectrum cap but also raising C and F block eligibility issues. See GTE Service Corporation, Petition for Declaratory Ruling and/or Waiver (March 8, 2000); Bell Atlantic Mobile, Inc., Petition for Limited (continued....)

These requests seek, among other things, modification of the C and F block eligibility requirements for the upcoming auction,⁴ reconfiguration of available 30 MHz C block licenses,⁵ and adoption of an alternative bidding plan.⁶

2. As justification for the proposed changes, the petitioners point to the relatively small percentage of C and F block licensees that have begun providing service in the years since the initial entrepreneurs' block auctions were held.⁷ They also note the increasing trend in the wireless marketplace toward nationwide service, their need for additional spectrum in order to ease spectrum capacity constraints, and their financial readiness to construct and operate C and F block systems should they win licenses in the upcoming auction.⁸ Numerous parties have filed opposing and supportive pleadings in response to these petitions.⁹ Opponents argue that businesses that qualify as "entrepreneurs" under our rules are more likely than larger companies to provide innovative and niche services and to serve rural areas; that the Commission's previous C and F block installment payment program was largely responsible for the dearth of build-out among C and F block licensees; and that changing the eligibility criteria at this juncture would be detrimental to the existing business plans of current C and F block "entrepreneur" licensees developed based upon these rules, and to the ability of small businesses to secure needed financing to provide valuable wireless services.¹⁰

3. Several parties have also asked that we consider whether we should revise, waive, or forbear

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Forbearance (February 17, 2000); BellSouth Corporation, Petition for Waiver and Expedited Action (February 17, 2000); AT&T Wireless Services, Inc., Petition for Waiver and Expedited Action (February 15, 2000).

⁴ See, e.g., SBC Petition, Nextel Petition.

⁵ See, e.g., US West/Sprint Petition at i, 4-7; Nextel Petition at 18-23.

⁶ See, e.g., Nextel Petition at 18-23.

⁷ See, e.g., SBC Petition at 6-10; Nextel Petition at 8-10.

⁸ See, e.g., SBC Petition at 11-12, 15-17; Nextel Petition at 5-10, 12-16; see also Nextel Reply at 15-18, 21-27; Nextel Opposition at 4.

⁹ See Appendix A. Appendix A-1 provides the full and abbreviated names of the parties filing comments or reply comments to the SBC and Nextel Petitions. Appendix A-2 provides the full and abbreviated names of the parties filing oppositions and other pleading in response to the US West/Sprint Petition.

¹⁰ See, e.g., Advocacy Comments at 2-4; 10-12; Advocacy Reply at 1, 2-3; Alaska Digitel Comments at 5-6, 13-14; Alaska Digitel Reply at 4-5; American Wireless Comments at 13-14; AT&T Wireless Reply at 3; Carolina Reply at ii, 7; Carolina PCS Comments at 10; Cleartalk Reply at 1; Council Tree Comments at 11-15; CT Reply at 5-6, 8-11; NTCA Comments at 4-6; Omnipoint Comments at ii, 2-5, 14-15; Onyx Comments at 8-9; OPM Auction Comments at 6; OPM Auction Reply at 9, 12; PCIA Comments at 11-14, 20-21; RTG Comments at 8-10; SMR Advisory Comments at 10-11, 14-15; Telecorp Comments at 5-6, 13-14; Tritel Comments at 5-6, 13-14; Tritel Reply at 4-5. We note that several parties refer to the Commission's eligibility rules for "designated entities," rather than for "entrepreneurs." Because, under current rules, applicants that qualify as entrepreneurs are permitted to participate in C and F block auctions even if they are not designated entities (i.e., small businesses, business owned by members of minority groups and/or women, and rural telephone companies – see 47 C.F.R. § 1.2110), we have interpreted these pleadings, where appropriate, as referring to entrepreneurs, rather than to designated entities.

from applying the Commercial Mobile Radio Service ("CMRS") spectrum cap for Auction 35.¹¹ In support of these requests, the petitioners assert that the demand for CMRS services has significantly increased and created substantial spectrum constraints over the last few years. Further, petitioners contend that lifting the spectrum cap would better enable them to roll out Third Generation ("3G") and other advanced services, as well as otherwise help ensure the rapid and efficient development of the C and F block spectrum. Those opposing these requests claim that the current spectrum cap allows sufficient spectrum in local geographic markets to roll out 3G services in the foreseeable future and that petitioners failed to establish any basis for waiving the spectrum cap.

4. Upon consideration of the petitions and responsive pleadings received to date, we have tentatively concluded that it is in the public interest to revise certain aspects of the C and F block rules. Accordingly, we seek comment in this *Further Notice of Proposed Rulemaking* ("*Further Notice*") on the following specific proposals to:

- **Reconfigure C Block Spectrum License Size**

We tentatively conclude that we will reconfigure each 30 MHz C block license available in future broadband PCS auctions into three 10 MHz C block licenses.

- **Apply a Tiered Approach to Basic Trading Areas (BTAs)**

We tentatively conclude that we will divide BTAs into two tiers according to the population size of the BTA. Under this proposal, "Tier 1" would comprise BTAs at and above a 2.5 million population threshold; and "Tier 2" would comprise BTAs below that population threshold.

- **Eliminate Eligibility Restrictions For Certain Licenses In Tiers**

We further propose to remove the auction eligibility restrictions for certain of the newly reconfigured 10 MHz C block licenses, thereby establishing "open" bidding for these licenses. We tentatively conclude that we will allow "open" bidding (i.e., remove the eligibility restrictions) for two of the three 10 MHz C Block licenses in Tier 1, and one of the three 10 MHz C Block licenses in Tier 2. We also invite comment on whether to allow "open" bidding for all three of the 10 MHz C Block licenses in Tier 1, and two of the three 10 MHz C Block licenses in Tier 2.

We tentatively conclude that we will allow "open" bidding for all available 15 MHz C block licenses, which have previously been auctioned but not sold.

We seek comment on whether to allow "open" bidding for all available F block licenses. We also seek comment on whether, instead, to adopt a tiered approach to eligibility for F block licenses or to retain existing F block eligibility requirements.

- **Retain Our Current License Grouping for Bidding in the Auction**

We tentatively conclude that we will retain BTA service areas and a license-by-license

¹¹ See App. B.

bidding design for Auction No. 35.

- **Clarify the Grandfather Exception**

We invite comment in this proceeding on a number of issues raised by parties seeking reconsideration of the grandfather exception to the eligibility rules, which is provided in Section 24.709(b)(9)(i). On the issue of how the exception applies in a merger situation, we tentatively conclude that when each of the merging entities is eligible for the “grandfather” exception, the exception extends to the resulting entity, but that when one (or more) of the merging entities is not eligible for the “grandfather” exception, the exception does not extend to the resulting entity.

- **Revise the Bidding Credits Available for Auction No. 35**

We seek comment on whether to retain existing small and very small business bidding credits (15 percent and 25 percent, respectively) for licenses subject to “open” bidding or whether to increase them to 25 percent and 40 percent, respectively. We also seek comment on whether we should change the bidding credits for licenses subject to “closed” bidding, i.e., bidding where eligibility restrictions apply.

- **Alter the Transfer Requirements For Certain Licenses**

Licenses Won in “Open” Bidding: We tentatively conclude that we will eliminate the Section 24.829 eligibility requirements for the assignment or transfer of control of C and F block licenses won in Auction No. 35 “open” bidding.

Licenses Won in “Closed” Bidding: We seek comment on allowing a licensee to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee’s completion of its first construction benchmark, whether or not it takes the full five years allowed under our rules.

Licenses Held by Incumbent Licensees: We seek comment on allowing an incumbent licensee to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee’s completion of its first construction benchmark, whether or not it takes the full five years allowed under our rules. We also seek comment on whether we should allow some flexibility for incumbent licensees to transfer certain licenses where the carrier can demonstrate “substantial service” throughout its system, rather than on a market-by-market basis.

- **Eliminate the License Cap**

We tentatively conclude that we will eliminate the Section 24.710 cap on the number of C and F block licenses a single entity may win at auction.

- **Retain the Spectrum Cap**

We tentatively conclude that we will not eliminate or expand the current spectrum cap in this proceeding.

II. BACKGROUND

5. In the Omnibus Budget Reconciliation Act of 1993,¹² Congress authorized the Commission to use systems of competitive bidding to award licenses for rights to use the radio spectrum. This authorization is codified as Section 309(j) of the Communications Act.¹³ Section 309(j)(3) directs the Commission to “seek to promote” a number of objectives, including:

- the development and rapid deployment of new services for the benefit of the public, including those residing in rural areas;
- promoting economic opportunity and competition and ensuring that new and innovating technologies are readily accessible to the public by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, i.e., “designated entities;”
- recovery for the public of a portion of the value of the public spectrum resource made available for commercial use;¹⁴
- avoidance of unjust enrichment through the methods employed to award uses of that resource; and
- efficient and intensive use of the electromagnetic spectrum.

6. Section 309(j)(4) directs the Commission, in prescribing regulations to implement the objectives of Section 309(j)(3), to, *inter alia*, (1) establish performance requirements to ensure prompt delivery of service to rural areas and prevent warehousing of spectrum by licensees; (2) prescribe area designations and bandwidth assignments that promote an equitable geographic distribution of licenses and services, economic opportunity for a wide variety of applicants, including designated entities, and rapid deployment of services; and (3) ensure that designated entities are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider using bidding preferences and other procedures.¹⁵

7. The Commission outlined the original framework for C and F block auctions in the 1994 *Competitive Bidding Fifth Report and Order*, establishing the C and F blocks as “set-aside” blocks for “entrepreneurs” in which eligibility would be restricted to entities below a specified financial threshold.¹⁶

¹² Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312 (1993).

¹³ Section 309(j) of the Communications Act of 1934, as amended (“Communications Act”), 47 U.S.C. § 309(j).

¹⁴ We note that Section 309(j)(7) of the Communications Act limits the Commission’s consideration of auction revenues in making public interest determinations. 47 U.S.C. § 309(j)(7).

¹⁵ 47 U.S.C. § 309(j)(4).

¹⁶ The Commission required that in order to be eligible to bid, an applicant, including attributable investors and affiliates, must have gross revenues of less than \$125 million in each of the last two years and less than \$500 million in total assets. *See Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5581-5582, ¶ 115. (continued....)

In doing so, the Commission noted the specific findings made by Congress, in the Small Business Credit and Business Opportunity Enhancement Act of 1992, that "small business concerns, which represent higher degrees of risk in financial markets than do large businesses, are experiencing increased difficulties in obtaining credit."¹⁷ The Commission concluded that if it was to meet the Congressional goals of promoting economic opportunity and competition by dissemination of licenses among a wide variety of providers, it should take certain affirmative steps to mitigate these barriers to entry.¹⁸ The Commission also stated its intention to take steps to assure that designated entities that win licenses have the opportunity to become strong competitors in providing service.¹⁹ Thus, in attempting to address the imbalance between small businesses' and large businesses' relative abilities to access capital, the Commission established two set-aside blocks (the C and F blocks) in which large companies (those over the financial thresholds) would be prohibited from bidding or holding licenses for a period of time.²⁰

8. The initial C block licenses were awarded through two auctions, Auction No. 5, which ended on May 6, 1996, and Auction No. 10, which concluded on July 16, 1996. Auction No. 11, the initial F block auction, ended on January 14, 1997, and also included D and E block licenses. Auction No. 22, which concluded on April 15, 1999, made available C and F block licenses that had been returned to, or reclaimed by, the Commission. Since the establishment of C and F block rules in 1994, no auctions, other than the C and F block auctions, have been conducted on a closed basis due to eligibility restrictions. Instead, in the 23 other auctions held by the Commission, we have typically provided opportunities for small businesses through bidding credits without a set-aside.

9. Since adoption of the *Competitive Bidding Fifth Report and Order*, the rules for auctions of C and F block licenses have steadily evolved in response to legislative changes, judicial decisions, the needs of licensees striving to succeed in a rapidly developing wireless market, and the demand of the public for greater access to wireless services. Two-and-a-half years ago, in this docket, the Commission responded to requests from some C block auction winners to revise the auction rules and procedures for the C and F blocks. In the 1997 *C Block Second Report and Order*,²¹ as modified by the 1998 *C Block Reconsideration Order*,²² the Commission created a package of financial restructuring options to be

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Originally, there was a personal net worth test, but this test was eliminated. See *Competitive Bidding Fifth Memorandum Opinion and Order*, 10 FCC Rcd at 420-21, ¶¶ 28-30.

¹⁷ *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd 5532, 5537-38, ¶ 11 (1994), quoting Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. No. 102-366, 106 Stat. 986, § 331(a)(3) (1992).

¹⁸ *Id.* at 5575-76, ¶ 103.

¹⁹ *Id.* at 5579, ¶ 111.

²⁰ *Id.* at 5580, ¶ 113.

²¹ Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Second Report and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd 16,436 (1997) ("*C Block Second Report and Order*").

²² Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345 (1998) ("*C Block Reconsideration Order*").

offered to C block licensees experiencing financial difficulties in the wake of Auctions No. 5 and No. 10. The Commission also decided in the *C Block Second Report and Order*, as modified by the 1998 *C Block Fourth Report and Order*, to allow, for a period of two years from the beginning of the first post-restructuring C block auction (Auction No. 22), participation in bidding for C block licenses by entities that had participated in Auctions No. 5 and 10,²³ even if such entities had since become too large to qualify as entrepreneurs under the Commission's rules.²⁴

10. Prior to the start of Auction No. 22, three C block licensees, NextWave Personal Communications, Inc. ("NextWave"),²⁵ GWI PCS Inc. ("GWI"),²⁶ and DCR PCS, Inc. ("DCR"),²⁷ filed for bankruptcy protection. Other C block licensees defaulted on payments owed for their licenses. Bankruptcy filings and payment defaults by other C block licensees followed the auction; and, to date, a total of 232 C and F block licenses, covering a population ("pops") of approximately 191 million,²⁸ have been involved in bankruptcy proceedings and/or defaulted on license payments. It appears that the vast majority of the defaulted licenses have never been placed into service.

11. As noted above, by Public Notice released January 12, 2000, the Bureau, pursuant to its delegated authority, announced that we would be holding a C and F block auction on July 26, 2000.²⁹ The current inventory for this auction includes 93 30-MHz C block licenses, 21 15-MHz C block licenses and 40 10-MHz F block licenses for operation on frequencies for which previous licenses have automatically cancelled³⁰ or have been returned to the Commission.³¹ The announcement of Auction No. 35 prompted

²³ Every participant in Auction No. 10 had participated in Auction No. 5.

²⁴ See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Fourth Report and Order*, 13 FCC Rcd 15,743, 15,749, ¶ 10, 15,751, ¶ 13, 15,752, ¶ 15 (1998) ("*C Block Fourth Report and Order*"); *C Block Second Report and Order*, 12 FCC Rcd 16,436, 16,448, ¶ 22; see also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Order on Reconsideration of the Fourth Report and Order*, 15 FCC Rcd 4740, 4742-43, ¶¶ 6-8 (2000) ("*C Block Fourth Report and Order Reconsideration*").

²⁵ The proceedings of NextWave are jointly administered with those of NextWave Power Partners Inc., NextWave Partners Inc., NextWave Wireless Inc., and NextWave Telecom Inc.

²⁶ The proceedings of GWI are jointly administered with those of General Wireless, Inc.; GWI PCS California/Florida, Inc.; GWI PCS Georgia, Inc.; and GWI PCS Chico, Inc. (now known as Metro PCS, Inc.; Metro PCS Wireless, Inc.; Metro PCS California/Florida, Inc.; Metro PCS Georgia, Inc.; and Metro PCS Chico, Inc.).

²⁷ The DCR proceedings are jointly administered with those of DCR's parent company, Pocket Communications, Inc.

²⁸ This population figure is based upon the 1990 census.

²⁹ "Auction of C and F Block Broadband PCS Licenses, Notice of Auction Scheduled for July 26, 2000," *Public Notice*, 15 FCC Rcd 693 (2000).

³⁰ See 47 C.F.R. § 1.2110(f)(4)(iii)-(iv). See also *NextWave Personal Communications, Inc. v. FCC*, 200 F.3d 43 (2nd Cir. 1999), *aff'd*, No. 99-5063 (2nd Cir. May 25, 2000).

petitions from SBC Communications Inc. ("SBC"), Nextel Communications, Inc. ("Nextel"), and other parties asking that we waive, modify, or eliminate our entrepreneur eligibility requirements for participation in the auction.³² In response to those filings, a number of parties also proposed that we make other modifications to our C and F block rules.³³ Additionally, US WEST Wireless, LLC ("US West") and Sprint Spectrum L.P. dba Sprint PCS ("Sprint") filed a joint petition for reconsideration of our Order on Reconsideration of the Fourth Report and Order in WT Docket No. 97-82 ("*C Block Fourth Report and Order Reconsideration*").³⁴ The *C Block Fourth Report and Order Reconsideration* addressed certain of the rules governing auctions of C block licenses. Sprint and US West request that the Commission eliminate its eligibility restrictions for participation in the upcoming auction as well as modify other C block rules. In addition, Verizon Wireless ("Verizon") petitioned the Commission for clarification or reconsideration of our two-year C block auction eligibility "grandfather" rule, Section 24.709(b)(9)(i).³⁵ The SBC, Nextel, and US West/Sprint petitions were placed on public notice, prompting more than 210 comments and other pleadings in response.³⁶ A number of parties argue that

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³¹ See "C and F Block Broadband PCS Spectrum Auction Scheduled for July 26, 2000," *Public Notice*, 15 FCC Rcd 4702, 4713-15, Att. A (2000).

³² CTIA Petition; Sprint Petition; "Extension of Filing Deadline for comments to the Petitions Filed by SBC Communications Inc. and Nextel Communications, Inc. Regarding PCS C and F Block Rules," *Public Notice*, 15 FCC Rcd 2814 (2000); Rural Cellular Association, Request for Extension of Time (February 9, 2000); Office of Advocacy of the United States Small Business Administration, Request for Additional Time to File Comments (February 7, 2000); National Telephone Cooperative Association, National Telephone Cooperative Association Expedited Request for Extension of Filing Deadline for Comments to SBC Communications Inc.'s and Nextel Communications, Inc.'s Request for Waiver of the Commission's Rules (February 4, 2000); Wireless Telecommunications Bureau Seeks Comment on Nextel Communications, Inc.'s Petition Regarding PCS C and F Block Spectrum, Extension of Filing Deadline for Comments to SBC Communications Inc.'s Request for Waiver," *Public Notice*, 15 FCC Rcd 2104 (2000); Nextel Petition; "Wireless Telecommunications Bureau Seeks Comment on SBC Communications Inc.'s Request for Waiver of the Eligibility Requirements for Participation in the Upcoming PCS C and F Block Auction," *Public Notice*, 15 FCC Rcd 1953 (2000); SBC Petition; see also the following petitions primarily concerning the Commercial Mobile Radio Service spectrum cap but also raising C and F block eligibility issues: GTE Service Corporation, Petition for Declaratory Ruling and/or Waiver (March 8, 2000); Bell Atlantic Mobile, Inc., Petition for Limited Forbearance (February 17, 2000); BellSouth Corporation, Petition for Waiver and Expedited Action (February 17, 2000); AT&T Wireless Services, Inc., Petition for Waiver and Expedited Action (February 15, 2000). GTE Service Corporation, Petition for Declaratory Ruling and/or Waiver (March 8, 2000); Bell Atlantic Mobile, Inc., Petition for Limited Forbearance (February 17, 2000); BellSouth Corporation, Petition for Waiver and Expedited Action (February 17, 2000); AT&T Wireless Services, Inc., Petition for Waiver and Expedited Action (February 15, 2000).

³³ See, e.g., Alpine PCS Reply at 3-4; Cleartalk Reply at 1,5; Coalition Reply at 3-5; RCA Comments at 11-17; US West Comments at i, 3, 6; UTStarcom Comments at 3.

³⁴ "Wireless Telecommunications Bureau Sets Comment Schedule for Petitions for Reconsideration of the on Reconsideration of the Fourth Report and Order in WT Docket No. 97-82," *Public Notice*, DA 00-760 (released April 5, 2000); US West/Sprint Petition; *C Block Fourth Report and Order Reconsideration*, 15 FCC Rcd 4740 (2000).

³⁵ Verizon Petition.

³⁶ See Appendix A. Party abbreviations noted in Appendix A are used in the text and footnotes of this *Further Notice*.

all, or at least some portion, of the C and F block spectrum should be open to all participants in order to satisfy the Commission's obligations under 309(j)(4).³⁷ Other parties oppose these arguments.³⁸

12. We have also received petitions from three parties that, under our proposed revisions to the C block rules, would become eligible to bid for licenses in the upcoming C and F block auction.³⁹ These parties request that the Commission waive, or forbear from applying, the CMRS spectrum cap with regard to the spectrum available in Auction No. 35. We placed these petitions on public notice⁴⁰ and received comments from 23 parties and reply comments from 14 parties.⁴¹

13. Based upon the extensive record before us, and our continuing obligation to weigh important spectrum policy management considerations in assessing the public interest, we have tentatively concluded that we will revise our rules for C and F block spectrum. We set forth our proposals and tentative conclusions concerning possible revisions in the rules in this *Further Notice*.

III. DISCUSSION

A. Reconfiguration of C Block Spectrum License Size

14. **Background.** In 1994, the Commission established a band plan for broadband PCS that

³⁷ See, e.g., AT&T Wireless Comments at 1-2, AT&T Wireless Reply at 1-2,4; D&E Communications Comments at 1-8; Ericsson Comments at 2-3; GTE Comments at 9; GTE Reply at i; Nextel Opposition at 1, 9-12; SBC Opposition at 2, 6; TDS Comments at 2; and Verizon Opposition at 2.

³⁸ See, e.g., Advocacy Comments at 1-5; Advocacy Reply at 1-2; Advocacy Opposition at 1-5; Advocacy *Ex Parte* at 1-3; Alaska Digital Comments at 1-2; Alaska Digital Reply at 1-2; Alpine Comments at 2-3; Alpine Reply at 1; American Wireless Comments; American Wireless Reply; American Wireless Opposition at 2-3; Burst Comments at 10; Carolina Comments at 8; Carolina Opposition at 6-7; Chadmoore Reply at 2-3; Cleartalk Reply at 1; Coalition Reply at 1-2; ComScape Opposition at 1; Council Tree Comments; CIRI Comments; CT Comments at 4-6; CT Reply at i-ii; Devon Comments at 1-2; Entertainment Unlimited Reply at 2; Georgetown Partners Comments at 2, 5-9; Georgetown Partners Reply at 2-3; Leap Comments at 2; Leap Opposition at 15-16; Northcoast Comments at 2; Northcoast Reply at 1; NPI Reply; NTCA Comments at 1; Omnipoint Comments at 2-4; Onyx Comments at 4-6; OPM Auction Comments at 2-3; OPM Auction Reply; OPM Auction Opposition at 4-5; PCIA Comments; PCIA Reply at 4; Polycell Reply at 1; RCA Comments at i; RTG/OPASTCO Comments at 10-13; SMR Comments; Telecorp Comments; Telecorp Reply at 2; Telecorp/Tritel Docketed Comments at 6-7; Tritel Comments at ii; Tritel Reply at 2, 9; VoiceStream Comments at 4-9; WOC Comments at 1-2.

³⁹ Bell Atlantic Mobile, Inc., Petition for Limited Forbearance (February 17, 2000); BellSouth Corporation, Petition for Waiver and Expedited Action (February 17, 2000); AT&T Wireless Services, Inc., Petition for Waiver and Expedited Action (February 15, 2000).

⁴⁰ See "Wireless Telecommunications Bureau Seeks Comment on AT&T Wireless Services, Inc., BellSouth Corporation and Bell Atlantic Mobile, Inc. Petitions Regarding CMRS Spectrum Cap Limits," *Public Notice*, DA 00-318 (released February 18, 2000). Subsequent to the issuance of the public notice, the Commission received an additional petition requesting that the Commission issue a declaratory ruling that the spectrum cap does not apply to the spectrum being auctioned in Auction No. 35 or, in the alternative, that the Commission waive the spectrum cap. See GTE Service Corporation, Petition for Declaratory Ruling and/or Waiver (March 8, 2000).

⁴¹ Petitioners and commenting parties are listed in Appendix B.

provides for 30 MHz "C block" licenses and 10 MHz "F block" licenses.⁴² Each C and F block license covers a specific geographic service area known as a Basic Trading Area ("BTA").⁴³ BTAs fall within still larger geographic service areas known as Major Trading Areas ("MTAs").⁴⁴ As noted above, in the 1997 *C Block Second Report and Order*, as modified by the 1998 *C Block Reconsideration Order*, the Commission created a package of financial restructuring options designed to provide limited relief to C block licensees experiencing financial difficulties in the wake of Auction No. 5.⁴⁵ Under one of the available options, licensees were allowed to disaggregate 15 MHz of each of their 30 MHz C block licenses in an MTA.⁴⁶ In disaggregating a 30 MHz C block license, a licensee would retain a 15 MHz C block license and would return the remaining 15 MHz of C block spectrum to the Commission for inclusion in the next C block auction, Auction No. 22.⁴⁷ Because several of the available 15 MHz C block licenses were not won in Auction No. 22, the license inventory for Auction No. 35 includes both 15 and 30 MHz C block licenses, as well as 10 MHz F block licenses.⁴⁸

15. A number of parties have suggested various proposals to alter the Commission's current band plan.⁴⁹ Several parties, including US West, Sprint, Verizon, and AT&T propose that we subdivide each available 30 MHz C block license into three 10 MHz licenses, arguing that this change would provide greater flexibility to licensees and permit dissemination of licenses among a wider variety of competitors.⁵⁰ Alternatively, Nextel requests that we subdivide each available 30 MHz C block license into a 20 MHz and a 10 MHz license, which it contends would allow bidders, whether new participants or existing licensees, to choose the spectrum block size that would best fit their needs.⁵¹ Bell Atlantic

⁴² Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 FCC Rcd 4957, 4975-4982, ¶¶ 41-62 (1994).

⁴³ See 47 C.F.R. § 24.202. The BTA service areas are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pp. 38-39.

⁴⁴ See *id.* The MTA service areas are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pp. 38-39.

⁴⁵ See *C Block Reconsideration Order*, 13 FCC Rcd 8345; *C Block Second Report and Order*, 12 FCC Rcd 16,436.

⁴⁶ See *C Block Reconsideration Order*, 13 FCC Rcd at 8366-8371, ¶¶ 49-60; *C Block Second Report and Order*, 12 FCC Rcd at 16452-58, ¶¶ 32-45.

⁴⁷ See *C Block Reconsideration Order*, 13 FCC Rcd at 8367-8371, ¶¶ 51-60; *C Block Second Report and Order*, 12 FCC Rcd at 16455-58, ¶¶ 38-45.

⁴⁸ See "C and F Block Broadband PCS Spectrum Auction Scheduled for July 26, 2000," *Public Notice*, 15 FCC Rcd 4702, 4713-15, Att. A (2000).

⁴⁹ Some proposals for band plan modifications are contingent upon Commission implementation of commenters' proposed changes to eligibility and other C and F block rules.

⁵⁰ See AT&T Opposition at 2-5; Sprint Comments at 3-6; US West Comments at i, 3, 6; US West Reply at 5-8; US West/Sprint Petition at 4-5; Verizon Opposition at 2, 6-7.

⁵¹ See Nextel Petition at 2-3, 16-23; Nextel Reply at ii-iv, 8-11, 14, 15-21, Rosston Declaration; Nextel Opposition at i, 2, 6-7.

supports the Nextel proposal, provided that spectrum cap relief accompanies such a change.⁵² Other parties, like GTE and SBC, argue against subdividing the C block license spectrum size.⁵³ A number of entrepreneurs also argue in favor of maintaining the status quo;⁵⁴ however, many of these parties would support reconfiguration of the licenses as a second-best alternative, provided that such a change included a partial set-aside of C block spectrum for entrepreneurs.⁵⁵

16. Discussion. We tentatively conclude that each 30 MHz C block license available in Auction No. 35 should be reconfigured into three 10 MHz C block licenses, as requested by a number of the parties. We believe that by increasing the number of available licenses through this reconfiguration,⁵⁶ taken together with our proposals to lift certain of our eligibility requirements, we will promote wider auction participation and license distribution in accordance with the goals of Section 309(j) of the Communications Act.⁵⁷ Small bidders should find bidding for 10 MHz licenses more affordable, while large bidders should enjoy greater flexibility in tailoring their bidding to their business plans without running afoul of the spectrum cap. We further tentatively conclude that a 10 MHz C block license is a viable minimum size for voice and some data services, including Internet access, and provides an appropriate building block for bidders that wish to acquire a larger amount of spectrum in particular markets.⁵⁸ Accordingly, we propose to permit bidders to aggregate the 10 MHz C block licenses, subject only to the overall 45 MHz CMRS spectrum cap, and the relevant remaining eligibility restrictions for these licenses. We seek comment on this proposal and our tentative conclusions. We also seek comment on whether a different configuration, including adoption of blocks of 20 MHz where possible, would be more appropriate to provide meaningful opportunities for potential bidders, including new entrants into particular geographic markets.

⁵² See Bell Atlantic Comments at 5-6.

⁵³ See GTE Reply at 8-9; GTE Opposition at 3-6; SBC Comments at 2, 6-7, 10-12; SBC Reply at 26; AT&T Comments at 8; Burst Comments at 13; Carolina PCS Comments at 17; CIRI Comments at 6; Council Tree Comments at 18-20; CTIA Comments at 2-3; Devon Comments at 5, 7; Ericsson Comments at 2, n.2; NTCA Comments at 7; Omnipoint Comments at 19-20; RTG Comments at 13-14; VoiceStream Reply at 8-9; WOC Comments at 12; Advocacy *Ex Parte* at 1-2; Advocacy Opposition at 1-2; OPM Opposition at 4; VoiceStream Opposition at 7-9; Carolina Opposition at 8-9; Leap Opposition at 4-5, 17-20; Telecorp/Tritel Opposition at 2, 6-7.

⁵⁴ See Carolina PCS Comments at 17; CIRI Comments at 6; CTIA Comments at 2-3; NTCA Comments at 7; Omnipoint Comments at 19-20; Advocacy *Ex Parte* at 1-2; OPM Auction Opposition at 4; VoiceStream Opposition at 7-9; Leap Opposition at 4-5, 17-20; Telecorp/Tritel Comments at 2, 6-7.

⁵⁵ See Alaska Opposition at 3-5; Burst Opposition at 9; Leap Opposition at 4-5, 17-20; Telecorp/Tritel Opposition at 2, 6-7.

⁵⁶ According to the most recent license inventory for Auction No. 35, 93 30-MHz C block licenses are slated to be available. See "C and F Block Broadband PCS Spectrum Auction Scheduled for July 26, 2000," *Public Notice*, 15 FCC Rcd 4702, 4713-15, Att. A (2000). Upon reconfiguration of these licenses as described in the accompanying text, our license inventory will increase by 186 C block licenses.

⁵⁷ See 47 U.S.C. § 309(j)(3)(B).

⁵⁸ See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *First Report and Order*, 15 FCC Rcd 476, 491, ¶ 36, 492, ¶ 38 (2000) ("700 MHz Band Order").

17. Finally, with respect to aggregation of 10 MHz licenses, we note that the Bureau recently sought comment on procedures for implementing a combinatorial ("package") bidding design for the auction of licenses in the 700 MHz bands, which would facilitate aggregations of complementary licenses into larger blocks.⁵⁹ While given the much larger number of licenses in this auction, true combinatorial bidding would be more complex and perhaps impractical to implement in the near term, we invite parties to suggest ways in which bidders could efficiently aggregate licenses in the auction process.

B. Eliminate Eligibility Restrictions For Certain Licenses Under a Tiered Approach

18. **Background.** Under the Commission's current rules, only qualified "entrepreneurs" are permitted to participate in auctions of C and F block licenses. To be considered an entrepreneur eligible for C and F block auction participation, an applicant (together with its affiliates and persons or entities that hold interests in the applicant and their affiliates) must have had gross revenues of less than \$125 million in each of the last two years and must have total assets of less than \$500 million.⁶⁰

19. We seek comment below on proposals to lift the entrepreneur eligibility restrictions for some, but not all, licenses available in Auction No. 35 and in future C and F block auctions. Our proposals take into account the contention of many entrepreneurs and their representatives that fairness requires the Commission to continue to maintain the present eligibility requirements.⁶¹ These parties contend that entrepreneurs developed business plans in the expectation that the C and F block licenses would remain set aside for them and that any auctions of reclaimed C and F block licenses would be subject to the same eligibility restrictions that applied in the original auctions of those licenses.⁶² These parties also argue that any lack of success among incumbent C and F block licensees can be attributed to

⁵⁹ See "Auction of Licenses in the 747-762 and 777-792 MHz Bands Scheduled for September 6, 2000, Comment Sought on Modifying the Simultaneous multiple Round Auction Design to Allow Combinatorial (Package) Bidding," *Public Notice*, DA 00-1075 (released May 18, 2000).

⁶⁰ See 47 C.F.R. § 24.709. There are two control group equity exceptions to this rule, as well as exceptions for small business consortia and certain publicly traded corporations. See *id.* § 24.709(b)(1)-(6).

⁶¹ Advocacy states that a number of small operators, whose licenses are paid in full, have launched service and many more plan to begin service in the coming months. See Advocacy Opposition at 4. Based on a survey it conducted, PCIA asserts that there are numerous success stories among current C and F block licensees in moving forward to create new jobs, new digital networks, new service offerings, and new competitive mobile voice data alternatives in their market areas. For example, TeleCorp has successfully launched PCS service in 24 markets since February of 1999. Telecorp has a market capitalization of approximately \$4.3 billion. See generally PCIA Comments. Also, Leap purchased 36 licenses in the 1999 C block reauctions and is purchasing additional licenses throughout the United States. Leap has introduced a new, local-only service that is rapidly adding customers. See generally *id.* Similarly, Alaska Digital describes how three C and F block licensees are operating in at least 29 markets in the Southeast United States and will have expanded service to several additional markets by year's end. Alaska Digital Comments at 4-5.

⁶² See, e.g., Burst Comments at 10; Cleartalk Reply at 1; Coalition Reply at 4; Council Tree Comments at 15-18; CT Reply at 5; Leap Comments at 20; Northcoast Comments at 2; Omnipoint Comments at 7-8; OPM Auction Comments at 7-8; OPM Auction Reply at 11-12; PCIA comments at 14-16; PCIA Reply at 4-5; RCA Comments at 8, 10-11; and VoiceStream Reply at 3.

bankruptcies, which were fueled by the now-suspended installment payment program.⁶³ They point out that successful entrepreneurs have achieved substantial public interest benefits by providing types of services and service packages not offered by larger providers,⁶⁴ and extending service to rural markets.⁶⁵ These parties also argue that the continuation of the eligibility restrictions will better serve their ability to expand their service area as a competing carrier and to enter roaming relationships with other regional carriers.⁶⁶

20. Our proposals also take into account some of the arguments of several CMRS providers seeking to participate in the upcoming auction that currently do not qualify for entrepreneur eligibility. Such providers argue that opening up the entire auction to all bidders would be pro-competitive because it would allow them to acquire additional spectrum to meet capacity concerns, provide advanced services, and increase the size of their subscriber "footprints."⁶⁷ They contend that they, unlike many entrepreneurs, possess the operational expertise and substantial resources necessary to construct and

⁶³ See, e.g., Advocacy Comments at 2, 8, 12; Advocacy Reply at 2; Advocacy Opposition at 1-5; Alaska Digital Comments at 5-6; Alpine Comments at 2; Alpine Reply at 2-4; American Wireless Comments at 5-6; Burst Comments at 7; Burst Opposition at 7-8; Carolina Reply at ii, 7; Coalition Reply at 3,5; Council Tree Comments at 11-15; CT Communications Comments at 7, 9-10; CT Mobile Comments at 3; Leap Comments at 6-9, 16-18; Leap Opposition at 2-3, 6-11; Northcoast Reply at 3-4; NTCA Comments at 5-6; Omnipoint Comments at ii, 4-5; Onyx Comments at 9; OPM Auction Comments at 6; OPM Auction Reply at 9; PCIA Comments at 20-21; PCIA Reply at 4; SMR Advisory Comments at 10-11, 14; Telecorp Comments at 5-6; Tritel Comments at 5-6; WOC Comments at 5-6, 10.

⁶⁴ See, e.g., Advocacy Comments at 10; Advocacy Reply at 1; Alaska Digital comments at 4-5; Alaska Digital Reply at 6-7; Alpine Reply at 1-2; American Wireless Comments at 4-5; Burst Comments at 11-12; Carolina at 11; Carolina Reply at ii, 8; CIRI Comments at 7-8; Chadmoore Reply at 2-3; CT Comments at 7; CT Reply at 2-5; Georgetown Partners Comments at 7; Northcoast Reply at 3-4; NPI Reply at 1-5; NTCA Comments at 5-6; Omnipoint Comments at 2-4; Onyx Comments at 9; OPM Auction Reply at 9-10; Polycell Reply at 1; PCIA Comments at ii, 11-14; PCIA Reply at 1-2; RCA Comments at 4-5; RTG Comments at 6-7; Telecorp Comments at 3-4; Telecorp Reply at 6-7; Tritel Comments at 3-5; Tritel Reply at 6-7; WOC Comments at 3.

⁶⁵ See, e.g., Advocacy Comments at 3, 10; Alaska Digital Comments at 13-14; Alaska Digital Reply at 4-5; Alpine Reply at 2; American Wireless Comments at 13-14; American Wireless Reply at 4-5; Carolina PCS Comments at 10; Cleartalk Reply at 1; CT Reply at 9-10; NPI Reply at 4; NTCA Comments at 4-6; Omnipoint Comments at 2-3, 13-15; Onyx Comments at 8; OPM Auction Reply at 12; PCIA Comments at 11-14; RTG Comments at 8-10; SMR Advisory Comments at 15; Telecorp Comments at 13-14; Telecorp Reply at 4-5; Tritel Comments at 13-14; and Tritel Reply at 4-5.

⁶⁶ See, e.g., Alaska Digital Comments at 4-5; Alaska Digital Reply at 5; American Wireless Comments at 4-5; American Wireless Reply at 5; Carolina PCS Comments at ii, 9, 15-16; Carolina PCS Reply at ii; Chadmoore Reply at 1-3; CT Comments at 11; CT Reply at 8-11; Devon Comments at 4-5; Leap Comments at 13-14; NTCA Comments at 6; Omnipoint Comments at 16-18; PCIA Reply at 5; Telecorp Comments at 4-5; WOC Comments at 9.

⁶⁷ See, e.g., AT&T Comments at 1-2; AT&T Reply at 1-2, 4; Bell Atlantic Comments at 9-10; D&E Communications Comments at 1-8; Ericsson Comments at 2-3; GTE Comments at 9; GTE Reply i; Nextel Reply at ii, 2-9, 15; US West Comments at 9-10; US West Reply at 1, 3-5. "Footprint" is an industry term of art referring to the total geographic area in which a wireless provider can offer services.

successfully operate PCS systems in already highly competitive markets.⁶⁸ These commenters also point to evidence that suggests that the set-aside of C and F Block spectrum has not been successful in encouraging entrepreneurs to participate in the provision of spectrum-based services, particularly in large markets.⁶⁹

21. We note that, in apparent recognition of the Commission's obligation to balance a number of spectrum policy considerations, many parties have offered compromise suggestions as alternatives to the current C block rules should the Commission choose not to adopt their preferred approaches. Some commenters, including a number of entrepreneurs, have suggested compromise alternatives that would eliminate the set-aside (in whole or in part) for markets with populations in excess of certain specified amounts ranging from 700,000 to five million.⁷⁰ According to these commenters, such compromise alternatives to the current C block rules would provide larger carriers with greater financial resources with access to licenses for markets with larger populations, without foreclosing the opportunity for entrepreneurs to bid for those licenses. The suggested alternatives would also maintain the eligibility restrictions in markets where entrepreneurs might have a better chance of success.

22. Some commenters suggest compromises that would not use tiers, but would disaggregate the 30 MHz C block licenses into three 10 MHz blocks and would open up the bidding on one or two of the three 10 MHz licenses in all markets. For example, Telecorp and Tritel would support open bidding on two 10 MHz licenses, provided that bidding credits for small businesses were increased for the open auctions.⁷¹ Similarly, US West and Sprint endorse setting aside one disaggregated 10 MHz license for entrepreneurs if the Commission does not adopt their preferred approach of open eligibility for all licenses.⁷² Leap offers an alternative that would combine the tiering and disaggregation approaches by suggesting that 20 MHz be open to all bidders in the largest markets (which it defines as over 5 million pops) and 10 MHz be open to all bidders in the markets below that threshold.⁷³ Burst and RTG each endorse reconfiguring the available 30 MHz C block licenses into 10 MHz and 20 MHz licenses and

⁶⁸ See Nextel Petition at 15-16; SBC Petition at 12-13; *see generally* AT&T Comments; US West/Sprint Petition.

⁶⁹ For example, Nextel notes that at least eight C and F block licensees holding more than 190 licenses have declared bankruptcy and that only a few of the nearly 1,000 C and F block licenses have been constructed and are in commercial operation. *See* Nextel Petition at i, 8-9. Similarly, SBC explains that the top three winning bidders from Auction No. 5 have declared bankruptcy and that the fourth has defaulted on its payments. SBC also explains that, in nine of the top ten markets by population, C block licenses were won by parties that later declared bankruptcy and that only one of 20 licenses in the top ten markets was operational at the beginning of 2000. *See* SBC Petition at i, 7-9.

⁷⁰ *See* SBC *Ex Parte* (March 21, 2000) (the Commission should waive the entrepreneur eligibility requirements for all BTAs with a population of 700,000 or more and retain the requirements for the remaining markets); Leap Opposition at 4-5, 17-20 (five million); American Wireless Opposition at 4-5 (two million); Carolina PCS Opposition at 10 (two million); AT&T Opposition at 5-7 (approximately one million).

⁷¹ TeleCorp/Tritel Opposition at 5-7.

⁷² US West/Sprint Petition at 5 n.10.

⁷³ *See* Leap Opposition at 4-5, 17-20.

opening the bidding for the 10 MHz C block licenses.⁷⁴

23. While most of the commenters have focused on the Commission's treatment of the C block spectrum, as a general matter, current entrepreneurs argue in favor of keeping the 10 MHz F block licenses as restricted. On the other hand, companies currently ineligible to participate in Auction 35 argue in favor of open eligibility for those licenses.⁷⁵

24. **Discussion.** As the expert agency charged with the management of the nation's radio spectrum, the Commission must continually evaluate the provision of service to the American public, weigh a variety of public interest considerations, and assess the changing needs of the industry. In doing so, we must always remain cognizant of our statutory obligations.⁷⁶ These obligations often require that we balance a number of different, and at times competing, spectrum policy goals. In discharging these responsibilities, we seek to provide meaningful opportunities to small businesses, to speed the deployment and development of new services to the public, to encourage the efficient use of spectrum, and to recover for the public a portion of the value of spectrum.

25. When we adopted the original rules for C and F block spectrum in 1994, PCS was in its infancy. Since 1994, circumstances in the industry have changed. In light of significant technology developments and increased demand for spectrum, it is appropriate for the Commission to consider reassessing the proper balance of its spectrum policies including whether its current C and F block rules continue to serve the public interest in all respects. In crafting rules for the upcoming auction, we recognize that we cannot overlook the difficulties that followed the original C block spectrum auction and our commitment, originally spelled out in the *Competitive Bidding Fifth Report and Order*, to promote opportunities for designated entities. As noted above, business failures and equity considerations compelled the Commission to allow the original C Block licensees to restructure their spectrum holdings and to provide for the grandfathering of certain entities for future C block auctions through March 23, 2001. We maintain our commitment to provide meaningful opportunities for entrepreneurs, including those that participated in our most recent auction of C block spectrum. We also recognize that some qualifying entrepreneurs have been successful innovators, providing service to rural markets and niche services in other markets. Our desire to promote the continued success of such entities, as they seek to fill in gaps in their service areas or otherwise strive to expand their service offerings, also factor into our decision regarding the extent to which we should revise our current rules.

26. Thus, although we have not, since the establishment of C and F block rules in 1994, conducted any auctions other than C and F block auctions and reauctions on a closed basis due to eligibility restrictions, we believe that entrepreneurs raise legitimate issues about preserving the eligibility restrictions on at least a portion of the spectrum that will be awarded in the upcoming

⁷⁴ See Burst Opposition at 9-11; RTG *Ex Parte* (April 17, 2000).

⁷⁵ Roseville explains that while it will be eligible to bid on C block spectrum in Auction No. 35 by virtue of the grandfather exception, it will not be eligible to bid on F block spectrum absent a change in Commission rules. Accordingly, Roseville suggests that the Commission raise the financial cap for eligibility, expand the grandfather exception, or remove the F block eligibility restriction entirely. See Roseville *Ex Parte* (May 25, 2000).

⁷⁶ See 47 U.S.C. §§ 301, 302, 308, and 309(j).

auction.⁷⁷ However, based on the demand for spectrum to satisfy congestion, new technology and competitive needs, we tentatively conclude that it would serve the public interest to make some additional spectrum available to all interested bidders.⁷⁸ In balancing these factors, we believe parties on both sides of this debate have suggested a number of possible compromises that better advance the public interest than either maintaining the status quo or, conversely, eliminating the eligibility restrictions entirely. In particular, we think the parties suggesting tiering approaches have proposed creative solutions to balancing the competing interests by recognizing both that the need for additional unrestricted spectrum is greatest in the larger markets and that the track record for success for smaller entities is strongest in mid-sized and smaller markets.

27. With these factors in mind, we seek comment on the following proposals to lift the entrepreneur eligibility requirements for some of the licenses available in Auction No. 35 and future auctions. Consistent with several of the recommendations we have received, these proposals vary in the amount of spectrum that would remain set-aside according to the size of both the available licenses and the markets.

28. **Available 30 MHz C block licenses:** For markets with available 30 MHz C block licenses, we seek comment on a proposal based on our tentative conclusion, discussed above, to reconfigure these licenses into three 10 MHz licenses. Our proposal is further based on dividing the available BTAs into two tiers: "Tier 1" would comprise BTAs with populations at or above a certain threshold, discussed below, and "Tier 2" would comprise BTAs below that population threshold. We tentatively conclude that we should allow "open" bidding (i.e. remove eligibility requirements) for two of the three 10 MHz C block licenses in Tier 1, and one of the three 10 MHz C block licenses in Tier 2. We seek comment on this tentative conclusion.

29. We recognize that in balancing the interests served by preserving meaningful opportunities for designated entities and those served by opening up the spectrum to bidding by all entities, there may be other proposals we should consider. Thus, we also seek comment on whether we should allow "open" bidding for all three of the 10 MHz C block licenses in Tier 1, and two of the three 10 MHz C block licenses in Tier 2.

30. **Tiers:** We also seek comment on what population threshold we should use to divide the Tier 1 and Tier 2 BTAs. As discussed, the record provides some indication that designated entities have had greater success in markets with smaller populations, particularly below the top twenty markets. Markets with larger populations inevitably require more capital to build out and provide service. Moreover, as noted by commenters, there is evidence that spectrum is needed by incumbents to provide new generation wireless services and to alleviate congestion or by new entrants to fill out service footprints.⁷⁹ Accordingly, we tentatively conclude that a population of 2.5 million or greater is the proper cut-off for

⁷⁷ We also note that we have conducted four auctions of C and F block licenses and have consistently applied the set-aside approach in each of these auctions.

⁷⁸ A number of entrepreneurial companies including Telecorp, Tritel, Burst, and RTG, suggest this type of approach. See, *supra*, paragraph 22.

⁷⁹ See AT&T Opposition at 2-5; Nextel Reply at 15-18, 21-27; Nextel Opposition at i, 2, 6-7; SBC Comments at 10-12; SBC Reply at 26; SBC Opposition at 2, 6-7; US West Comments at i, 3, 6; US West Reply at 5-8; US West/Sprint Petition at 4-5; Verizon Opposition at 2-5.

Tier 1 BTAs (the 17 largest markets); however, we also seek comment on establishing the threshold for Tier 1 at those BTAs with populations at or greater than either 2 million (the 23 largest markets) or 1.5 million (the 32 largest markets). We recognize that other alternatives might also make sense. For example, we might also create a "Tier 3" for BTAs with populations below 700,000, the demarcation line that SBC recommends, establishing in this tier a larger set-aside for entrepreneurs. We also might instead decline to adopt a tiered approach at all, instead applying changes in eligibility restrictions to all BTAs, regardless of size. We seek comment on these alternatives, as well as on other possible tier divisions and other options for opening the bidding for some of the available C block licenses.⁸⁰

31. **Available F block licenses:** We seek comment on eliminating the eligibility requirements for all of the 10 MHz F block licenses available in Auction No. 35. We note that from a historical perspective, F block did not face the same types of problems and difficulties as C block.⁸¹ This difference is evidenced by the fact that the Commission did not see the need to allow F block licensees to restructure their spectrum holdings, nor did it provide for the grandfathering of eligibility for entrepreneur entities in future F block auctions. Thus, we have consistently treated the F block spectrum differently than C block in recognition of the fact that the history of these spectrum blocks evolved in divergent manners. Accordingly, we may not be faced with the same equity considerations in maintaining a set-aside of F block spectrum as we are for C block. Moreover, we note that in virtually all markets where there is an available F block license, there is a 30 MHz license held by a current C block entrepreneur.⁸² Thus, there is already significant set-aside spectrum in each of these markets. Further, despite the lack of historical controversy regarding the F block spectrum, build out of these licenses has not progressed as quickly as we may have anticipated, especially in larger markets. Allowing open eligibility for all 10 MHz F block licenses might lead to more expeditious provision of service to American consumers. Alternatively, we recognize that we could adopt a tiered approach similar to the proposals for C block licenses discussed above, or we could retain the existing F block eligibility requirements. We seek comment on these alternatives.

32. **15 MHz C block licenses:** Finally, we propose, and seek comment on, eliminating the eligibility requirements for all 15 MHz C block licenses that will be available in Auction No. 35 and in future C block auctions. As noted previously, all of the 15 MHz licenses available in Auction No. 35 were available in restricted Auction No. 22, yet remained unsold. Accordingly, we believe that it is appropriate to make these licenses, located principally in rural markets, immediately available to any interested bidder.

33. **Unsold C and F block licenses:** We also seek comment on whether we should establish a rule that lifts eligibility restrictions on any C or F block licenses that remain unsold after Auction No. 35 or in other future auctions. Such licenses could then promptly be put up for auction under open bidding.

⁸⁰ In the absence better official data, we will rely on 1990 census data for population numbers.

⁸¹ For example, F block licensees did not face the same circumstances or have the same financial difficulties as some of the original C block licensees. See *C Block Reconsideration Order*, 13 FCC Rcd at 8377-78, ¶¶ 75-76; *C Block Second Report and Order*, 12 FCC Rcd at 16,446, ¶ 20.

⁸² See the license inventory for Auction No. 35. See "C and F Block Broadband PCS Spectrum Auction Scheduled for July 26, 2000," *Public Notice*, 15 FCC Rcd 4702, 4713-15, Att. A (2000). In three of the markets listed in the inventory – Longview, WA; Portland, OR; and Salisbury, MD – both an F block license and a 30 MHz C block license are available.

C. License Grouping for Bids

34. **Background.** In past C and F block auctions (as well as D and E block auctions), participants have bid separately for each license. Nextel proposes that all available 30 MHz licenses be reconfigured into 20 MHz and 10 MHz licenses and that the newly created 20 MHz C block licenses and the available 15 MHz C block licenses be offered together on a “bulk bid” (i.e., winner take all) basis in an expedited auction.⁸³ Most commenters oppose Nextel’s bulk bidding proposal, characterizing it as designed to benefit solely Nextel. Numerous smaller companies point out that the bulk bid auction would be out of the financial reach of entrepreneurs.⁸⁴ Larger companies complain that spectrum cap limitations would prevent them from vying for the bulk bid package.⁸⁵

35. **Discussion.** We tentatively conclude that we will take bids separately on each license in Auction No. 35 on a simultaneous multiple round basis as we have done in the past. We are persuaded by commenters that the massive scale of Nextel’s bulk bid proposal (or something similar based upon a 10 MHz C block license configuration) would exclude all but a very few competitors. Small entities would be hard pressed to obtain the financing necessary to win and pay for the licenses and construct the systems included in the bulk bid proposal. Many other carriers would be constrained from participating by the CMRS spectrum cap. While we agree with Nextel that bidding for individual licenses will make it somewhat more challenging for it to win the very broad aggregation of licenses it seeks to acquire,⁸⁶ we do not think this requires us to resort to its bulk bid proposal. Experience in our auctions to date demonstrates that significant aggregations of licenses through the auction process are feasible.⁸⁷ For this reason, we believe that bidding for each license separately is unlikely to preclude carriers from aggregating licenses on a nationwide or regional basis, and at the same time provides carriers who have intense spectrum needs in a particular market the opportunity to compete for licenses as well.⁸⁸

D. Grandfather Exception

36. **Background:** In the *C Block Second Report and Order*, the Commission established in Section 24.709(b)(9)(i) a “grandfather” exception to the entrepreneur eligibility requirement for

⁸³ See Nextel Petition at 18-23.

⁸⁴ See, e.g., Alaska Digital Comments at 14-15; Alaska Digital Reply at 9-10; American Wireless Comments at 14-15; Carolina Comments at iii; Carolina Reply at ii, 13-14; CTIA Comments at 1-3; Northcoast Reply at 1-2; Omnipoint Comments at 18-21; OPM Auction Comments at 4; OPM Auction Reply at 2, 14-15; PCIA Comments at 27-30; TDS Comments at 3-6; WOC Comments at 11-12.

⁸⁵ See, e.g., GTE Comments at 14; GTE Reply at 11; GTE Opposition at 7-8; Sprint Comments at 6; US West Comments at ii, 2, 6; VoiceStream Comments at 3, 11.

⁸⁶ See Nextel Reply at 15-18 and at Rosston Declaration, 11, 14-19; Nextel Opposition at 5-8, 11-17.

⁸⁷ Winning bidders in our A and B block and DEF block auctions, Auctions No. 4 and 11, were successful in aggregating licenses. We have proposed, *supra*, to permit licensees to aggregate newly created 10 MHz C block licenses within BTAs.

⁸⁸ See, *supra*, paragraph 17, on combinatorial bidding and the aggregation of licenses in the auction process.

participation in C block auctions.⁸⁹ Under that exception, all entities that had been eligible for and had participated in Auction No. 5 would be eligible to bid on C block licenses in Auction No. 22, regardless of their financial size at the time of the auction.⁹⁰ We declined to apply the “grandfather” exception to bidding on F block licenses, based on our belief that F block licensees did not have the same need for financial relief.⁹¹ In the *C Block Fourth Report and Order*, we decided, in fairness to other future bidders, to limit the grandfather exception to a two-year period beginning on the start date of Auction No. 22, i.e., through March 23, 2001.⁹² In the *C Block Fourth Report and Order Reconsideration*, we denied a petition by Omnipoint asking that we extend the grandfather exception indefinitely.⁹³

37. **Discussion:** In a petition for reconsideration or clarification of the *C Block Fourth Report and Order Reconsideration*, Verizon asks us to reexamine the grandfather exception and limit resulting eligibility to those Auction No. 5 and 10 participants that won licenses in the auctions and then returned spectrum pursuant to the Commission’s C block restructuring options.⁹⁴ Verizon explains that such entities are subject to Section 24.709(a)(3), which requires C and F block licensees to maintain their entrepreneur status for five years from the date of licensing, but does not count against their financial growth due to nonattributable equity investments, debt financing, revenue from operations or other investments, business development, or expanded service.⁹⁵ According to Verizon, other grandfathered entities have no similar constraint on growth and, accordingly, may now be “very large.”⁹⁶ Verizon also proposes that the entity claiming the grandfather exception must be the same company – substantially the same ownership and control – that acquired the entrepreneur status.⁹⁷ We seek comment on the issues raised in the Verizon petition and, more generally, on whether the grandfather exception should be revised or clarified in light of current circumstances.⁹⁸

38. We note that Nextel makes arguments similar to Verizon’s in response to the US West/Sprint petition and also objects to the fact that the grandfather exception does not extend to Auction No. 11 and

⁸⁹ *C Block Second Report and Order*, 12 FCC Rcd at 16,448, ¶ 22.

⁹⁰ *Id.*

⁹¹ See, e.g., *See C Block Reconsideration Order*, 13 FCC Rcd at 8377-78, ¶¶ 74-76; *C Block Second Report and Order*, 12 FCC Rcd at 16,446, ¶ 20.

⁹² *C Block Fourth Report and Order*, 13 FCC Rcd at 15,752, ¶ 15. In the *C Block Order on Reconsideration*, we modified § 24.709(b)(9)(i) to extend the “grandfather” exception to participants in Auction No. 10, as well as those in the “original” C block auction, Auction No. 5. 63 Fed. Reg. 17,111, 17,122 (April 8, 1998). See also *C Block Fourth Report and Order Reconsideration*, 15 FCC Rcd at 4742, ¶ 6.

⁹³ *C Block Fourth Report and Order Reconsideration*, 15 FCC Rcd at 4742-43, ¶¶ 7-8.

⁹⁴ Verizon Petition at 9-10.

⁹⁵ *Id.* at 7.

⁹⁶ *Id.* at 6.

⁹⁷ *Id.* at 10.

⁹⁸ We will address the issues raised in the Verizon Petition in the order we adopt in this docket.

Auction No. 22 participants.⁹⁹ Nextel suggests that the Commission limit the grandfather exception only to licensees from Auction No. 5 and not allow successor companies and merged entities to benefit from the exception, which it contends “would eviscerate the purpose of having any eligibility rules at all.”¹⁰⁰ We have received notice that currently “grandfathered” companies intend to combine with other carriers, some of which are also eligible for the grandfather exception. We believe that the eligibility of successor entities for participation in “closed” bidding is a subject that may also be ripe for clarification in our upcoming order. Accordingly, we seek comment on our tentative conclusion that upon the merger of two entities, each of which is eligible for the “grandfather” exception, the exception extends to the resulting entity, but that, upon the merger of two entities, only one of which is eligible for the “grandfather” exception, the exception does not extend to the resulting entity. We recognize that our tentative conclusion is based upon simplified examples, and we encourage comment on how to determine C and F block eligibility when faced with more complex transactions.

E. Bidding Credits

39. Under current rules, a winning C or F block bidder that qualifies as a small business (i.e., a business that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has had average annual gross revenues that are not more than \$40 million for the preceding three years)¹⁰¹ or a small business consortium¹⁰² may use a bidding credit of 15 percent.¹⁰³ A winning bidder that qualifies as a very small business (i.e., a business that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has had average annual gross revenues that are not more than \$15 million for the preceding three years)¹⁰⁴ or a very small business consortium¹⁰⁵ may use a bidding credit of 25 percent.¹⁰⁶

40. Since the Commission first established the entrepreneurs’ block set-aside and C and F block bidding credits, its experience has demonstrated that bidding credits without a set-aside enable small businesses to compete effectively in open auctions, even auctions of broadband PCS licenses. For example, in Auction No. 11, where D and E block, as well as F block, broadband PCS licenses were available, small and very small businesses bid against larger applicants for D and E block licenses. Even though the D and E block licenses were not set aside for entrepreneurs, and installment financing was not available for those licenses, small and very small businesses – using bidding credits of 15 percent and 25 percent, respectively – were the high bidders for 141, or 14.3 percent, of the 986 D and E block licenses won in that auction. In the MDS auction – using bidding credits of 15 percent – 91 percent of the

⁹⁹ Nextel Opposition at ii, 9-15.

¹⁰⁰ *Id.* at 13-15.

¹⁰¹ See 47 C.F.R. § 24.720(b)(1), (3).

¹⁰² See *id.* § 24.720(b)(1), (3), (4).

¹⁰³ See *id.* §§ 24.712(a); 24.717(a); 1.2110(e)(2)(iii).

¹⁰⁴ See *id.* § 24.720(b)(2), (5).

¹⁰⁵ See *id.* § 24.720(b)(2), (3), (5).

¹⁰⁶ See *id.* §§ 24.712(b); 24.717(b); 1.2110(e)(2)(ii).

winning bidders were small businesses, winning 77 percent of the licenses. In the first LMDS auction – using bidding credits of 25 percent, 35 percent, and 45 percent – 89 percent of the winning bidders were small businesses, winning 78 percent of the licenses, while in the second LMDS auction, 80 percent of the winning bidders were small businesses, winning 74 percent of the licenses.¹⁰⁷ In the SMR 900 MHz auction – using bidding credits of 10 percent and 15 percent – 75 percent of the winning bidders were small businesses, winning 26 percent of the licenses. Finally, in the 39 GHz auction – using bidding credits of 25 percent and 35 percent – 39 percent of the winning bidders were small businesses.

41. **Discussion.** A number of entrepreneurial firms have argued that if we open eligibility for some portion of the C block spectrum, we should increase the bidding credits applicable to those licenses.¹⁰⁸ Otherwise, they argue, small businesses will not have a meaningful opportunity to compete in an open auction. We recognize that evidence in the record suggests that major, well-capitalized wireless companies have a significant interest in seeking to acquire this spectrum. We therefore seek comment on whether we should retain existing small and very small business bidding credits (15 percent and 25 percent, respectively) for licenses subject to “open” bidding or whether we should increase them to 25 percent and 40 percent, respectively.¹⁰⁹

42. We also seek comment on whether we should change the bidding credits for licenses subject to “closed” bidding, i.e., bidding where eligibility restrictions apply. For example, we could increase the bidding credits for these licenses, or we could keep them at their current level since the rationale for increasing the credits in open auctions – to provide additional assistance for small companies bidding against major wireless providers – does not apply to restricted auctions. Finally, we could eliminate bidding credits altogether on the ground that they are unnecessary and perhaps even counterproductive in ensuring opportunities for small business in the set-aside auctions. In this regard, we recognize that among those eligible to participate in the closed, entrepreneurs’ auctions, some well capitalized new entities with small gross revenues qualify for bidding credits, while some older companies with small total assets and net revenues but high gross revenues do not. At least one commenter has questioned whether, in light of such results, offering bidding credits in a “closed” auction continues to make sense.¹¹⁰ We seek comment on these various proposals.

¹⁰⁷ We note that for these LMDS auctions, pursuant to Section 101.1003 of the Commission’s rules, an incumbent local exchange carrier or incumbent cable operator was prohibited from owning an attributable interest in an LMDS A block license if there was a significant overlap between the LMDS license’s geographic service area and the incumbent’s authorized or franchised service area. 47 C.F.R. § 101.1003.

¹⁰⁸ See, e.g., Alaska Opposition at 5 (increase to 40% for small businesses and 50% for very small businesses); PCIA Opposition at 4-5 (increase to at least 50%); TeleCorp/Tritel Opposition at 5 (increase to 35% and 45%, respectively); see also Leap Opposition at 3-5 (citing a spectrum allocation proposal under which small and very small business bidding credits would increase for all licenses to 35% and 45%, respectively).

¹⁰⁹ Numerous commenters are in favor of continuing to provide small and very small businesses with bidding credits for all C and F block licenses. See, e.g., US West/Sprint Petition at i, 4; Cleartalk Reply at 5; US West Reply at 2-3; Nextel Opposition at 2; OPM Auction Opposition at 3; SBC Opposition at 2; and Verizon Opposition at 2,6. But see Roseville *Ex Parte* at 5 (May 25, 2000) (if the F block is opened up for all bidder, bidding credits should not be made available to any bidders).

¹¹⁰ See Dobson *Ex Parte* at 3-4 (May 31, 2000); Dobson *Ex Parte* at 2 (April 20, 2000).

F. Transfer Requirements

43. To ensure that C and F block licensees did not take advantage of the eligibility set-aside by immediately assigning or transferring control of their licenses to entities that do not meet the eligibility requirements, the Commission established a holding rule for these licenses as well as unjust enrichment provisions.¹¹¹ Under the current holding rule, C and F block licensees may, for the first five years from the date of their initial license grant, assign or transfer control of their C and F block licenses only to entities that meet the eligibility requirements or to other C and F block licensees that obtained their licenses while meeting the requirements.¹¹² The Commission set the current holding period at five years to guarantee that a C or F block licensee would hold and build out the license until the first construction benchmark,¹¹³ which currently occurs five years after the date of licensing.¹¹⁴

44. **Discussion.** We propose to modify our transfer requirements to correspond to our proposed changes in the eligibility requirements and to encourage rapid construction of C and F block systems. Specifically, we tentatively conclude that C and F block licenses won pursuant to open bidding at Auction No. 35, or any future open auction for such spectrum, would not be subject to a transfer holding rule. For licenses won in closed bidding in any C or F block auction, past or future, we seek comment on tying the holding period to completion of build-out requirements. Under this proposal, a licensee would be able to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed by our rules. In this way, we can continue to minimize the trafficking of C and F block licenses won pursuant to closed bidding, while enhancing the likelihood of early build-out. We seek comment on these proposals.

45. Additionally, we seek comment on whether to allow some further flexibility for incumbent licensees that may not have fully satisfied their construction requirements for all their licenses. We note that at least one carrier argues that it needs the flexibility to sell and exchange licenses in order to restructure its business plans.¹¹⁵ We wish to examine whether we should, under certain circumstances, evaluate a licensee's compliance with construction requirements on a system-wide basis. For example, we seek comment on whether we should allow a carrier to exchange and transfer licenses if the carrier can demonstrate "substantial service" throughout its system, rather than in that particular market. We also seek comment on any other modifications to our transfer restrictions that would provide incumbent licensees with the flexibility to restructure their business plans without decreasing their incentive to rapidly construct systems and place them into operation.

¹¹¹ See *Competitive Bidding Fifth Memorandum Opinion and Order*, 10 FCC Rcd at 465-469, ¶¶ 117-127; *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5588-89, ¶¶ 128-29.

¹¹² 47 C.F.R. § 24.839

¹¹³ See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, GN docket No. 90-314, *Report and Order*, 11 FCC Rcd 7824, 7863, ¶ 84 (1996).

¹¹⁴ 47 C.F.R. § 24.203; see also *id.* §§ 1.2111.

¹¹⁵ See CIRI Opposition at 2-6.

G. License Cap

46. **Background.** Section 24.710 of the Commission's rules prohibits an auction applicant from winning more than 98 C and F block licenses.¹¹⁶ The rule requires an applicant that is the high bidder for more than 98 C and F block licenses to withdraw its bids for a sufficient number of licenses to comply with the 98-license limit. The limit applies only to licenses won at auction, not to the total number of licenses that may be obtained post auction.¹¹⁷ When established in 1994, the license cap was intended to facilitate a fair distribution of licenses within the two blocks by preventing an entity from winning more than approximately 10 percent of the then-total of 986 C and F block licenses.¹¹⁸ Exercise of the disaggregation option prior to Auction No. 22 created an additional 134 C block licenses, bringing the total number of C and F block licenses to 1,120.¹¹⁹ In creating the "pure amnesty" option – pursuant to which C block licensees could return their spectrum to the Commission, relinquish the entire down payment for that spectrum, and remain fully eligible to reacquire the returned spectrum at auction or otherwise – the Commission failed to address whether the returned spectrum would count against the licensees' 98-license limit. In response to a 1999 request by Omnipoint for a limited waiver of Section 24.710 in connection with Auction No. 22, the Auctions and Industry Analysis Division ("Division") increased the license cap for all Auction No. 22 bidders to 112 licenses, i.e., 10 percent of the new license total.¹²⁰ The Division also clarified that C block licenses returned under the "pure amnesty" option would not count against the license cap.¹²¹ This waiver was requested and granted only for Auction No. 22.¹²²

47. **Discussion.** We tentatively conclude that we will remove Section 24.710 from the Commission's rules. In 1994, when the rule was implemented, the Commission anticipated holding only one C block and one F block auction. To date, however, four C and F block auctions have been held, with the fifth, Auction No. 35, scheduled and one or more additional auctions anticipated. Many different entrepreneurs have won C and F block licenses at auction, and substantial diversity among C and F block licensees continues to exist. The Commission has achieved its initial objective of a fair distribution C and F block licenses. Moreover, our proposal to reconfigure available 30 MHz C block licenses, if implemented, would create an additional 186 C block licenses, while adoption of our proposal

¹¹⁶ 47 C.F.R. § 24.710.

¹¹⁷ *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5606, ¶ 171.

¹¹⁸ *Id.* at 5606 ¶ 170.

¹¹⁹ See *C Block Second Report and Order*, 12 FCC Rcd at 16,455-56, ¶¶ 38-39; *C Block Reconsideration Order*, 13 FCC Rcd at 8366-67, ¶ 49; "Wireless Telecommunications Bureau Announces Broadband Personal Communications Services (PCS) C Block Unconditional Elections," *Public Notice*, 13 FCC Rcd 17,434 (1998); "Wireless Telecommunications Bureau Announces Broadband Personal Communications Services C Block Elections," *Public Notice*, 13 FCC Rcd 16,705 (1998), *erratum* (released June 18, 1998).

¹²⁰ Letter from Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Mark J. O'Connor, Esq., Counsel for Omnipoint Corporation, 14 FCC Rcd 6240 (1999).

¹²¹ *Id.*

¹²² See *id.* at 6242.

to eliminate the eligibility restrictions for many of the available C and F block licenses would significantly enhance the likelihood that these licenses would be won by a variety of entities. Accordingly, we seek comment on this tentative conclusion.

H. Spectrum Cap

48. **Background.** The CMRS spectrum cap, set forth in Section 20.6 of the Commission's rules, limits the amount of cellular, broadband PCS, and digital Specialized Mobile Radio ("SMR") spectrum in which any entity may have an attributable interest in any geographic area.¹²³ As discussed above, we received petitions from three parties that request that the Commission waive, or forbear from applying, the CMRS spectrum cap with regard to any spectrum awarded in the upcoming C and F blocks auction.

49. **Discussion.** We tentatively conclude that we should not grant the petitions seeking waiver of, or forbearance from, the CMRS spectrum cap rules and, accordingly, we will apply the cap to licenses of PCS C and F block spectrum to be auctioned in Auction No. 35. In September 1999, after extensive analysis of spectrum allocation and competitive market conditions, we determined in our *Biennial CMRS Spectrum Cap Order* that the CMRS spectrum cap, with some modification, continued to be a necessary and efficient means to promote competition and protect the public interest.¹²⁴ Specifically, we concluded that a cap on this spectrum serves the public interest by promoting competition, preventing excessive concentration of licenses, providing incentives for licensees to make more efficient use of their spectrum, encouraging innovation, and promoting dissemination of licenses to a wide variety of applicants.¹²⁵ We also concluded that the "bright-line" test afforded by the CMRS spectrum cap rule efficiently promoted regulatory certainty and regulatory efficiency.¹²⁶ For any carrier with a demonstrable need for additional spectrum in a particular geographic area, we established and clarified a process by which it could obtain a waiver of the spectrum cap rule.¹²⁷

50. On the basis of the petitions and the record filed in response, we propose not to revise the CMRS spectrum cap in light of the upcoming auction and our proposed rule changes described above. Since its inception in 1994, the cap on the 180 MHz of CMRS spectrum (*i.e.*, cellular A and B blocks, PCS A through F blocks, and digital SMR) has limited the amount of spectrum any carrier could aggregate from any part of the CMRS spectrum, including spectrum in the PCS C and F blocks, so as to

¹²³ See 47 C.F.R. § 20.6.

¹²⁴ See 1998 Biennial Regulatory Review – Spectrum Aggregation Limits for Wireless Telecommunications Carriers, WT Docket No. 98-205, *Report and Order*, FCC 99-244, at ¶¶ 1-2, 5-6, 20-65, 77-85 (released September 22, 1999) ("*Biennial CMRS Spectrum Cap Order*"). Specifically, we determined that the 45 MHz spectrum cap should remain in place except in rural areas, defined as rural service areas (RSAs), where we raised the cap to 55 MHz. *Id.* at ¶¶ 77-85. The Commission first instituted a CMRS spectrum cap in 1994, and reaffirmed the spectrum cap in 1996. See *id.* at ¶¶ 9, 11-13.

Two parties have filed petitions for reconsideration of the *Biennial CMRS Spectrum Cap Order*, while a third has filed a petition for clarification. We will address these petitions in a separate order in the near future.

¹²⁵ See generally *id.* at ¶¶ 20-65, 77-85.

¹²⁶ *Id.* at ¶¶ 49-58.

¹²⁷ *Id.* at ¶ 82.

ensure the many benefits of competition.¹²⁸ The pleadings filed in connection with the upcoming auction contain no new material information regarding the costs and benefits of the spectrum cap and do not purport to make a waiver showing under the standard set forth in the *Biennial CMRS Spectrum Cap Order*. Our proposal to revise the rules pertaining to the PCS C and F block spectrum helps ease the impact of the cap in this auction, and thereby renders cap relief unnecessary.¹²⁹ By proposing to divide the 30 MHz blocks of C block spectrum into 10 MHz blocks in the upcoming auction, we would better enable carriers to obtain additional spectrum without the need to exceed the CMRS spectrum cap. Carriers currently have accumulated spectrum up to the CMRS spectrum cap limits, either the general 45 MHz cap or the 55 MHz cap that applies to rural areas, in only a few locations. With regard to the C and F block spectrum to be auctioned, in every market almost all carriers could obtain additional spectrum in blocks of 10 MHz (or 15 MHz where applicable) and still comply with the spectrum cap without any need for disaggregation.¹³⁰ As discussed above, for those carriers that require more than 45 MHz of spectrum in the near term, we have established a process for granting waiver of the spectrum cap. We stated that we would consider granting a waiver of the spectrum cap in a particular geographic area to the extent a carrier could credibly demonstrate that the spectrum cap was having a significantly adverse effect on its ability to provide 3G or other advanced services.¹³¹ We also note that our year 2000 biennial review¹³² of the spectrum cap rule commences later this year. This proceeding will provide us another opportunity to revisit, in a more comprehensive manner than the pleadings before us, issues pertaining to the CMRS spectrum cap and whether it should be retained, modified, or eliminated.¹³³ We seek comment on our tentative conclusion to retain the CMRS spectrum cap on the PCS C and F block spectrum scheduled for auction.

IV. CONCLUSION

51. Based on the foregoing, we seek comment on overall changes to the C and F block rules that take into account our competing statutory objectives to manage spectrum in the public interest. We conclude that this Further Notice of Proposed Rulemaking will provide us with an opportunity to develop

¹²⁸ *Id.* at ¶¶ 78-83.

¹²⁹ In our recent *700 MHz Band Order*, issued in January 2000, we determined not to apply a spectrum cap to the 700 MHz band spectrum in large measure because we determined that the CMRS spectrum cap helped ensure that a competitive structure in the CMRS marketplace was being maintained. *See 700 MHz Band Order*, 15 FCC Rcd at 498, ¶ 53.

¹³⁰ For instance, in those markets where the C block would be divided into 10 MHz blocks of spectrum, our analysis indicates that relatively few carriers currently have more than 35 MHz of spectrum in markets in which the 45 MHz cap applies.

¹³¹ *Biennial CMRS Spectrum Cap Order* at ¶ 82. Specifically, we requested that petitioners clearly identify what additional services they would provide if the waiver were granted and why such services could not be provided without exceeding the cap. In evaluating such a waiver request, we plan to weigh both the potential benefits that would be provided by the advanced services and the potential adverse impact of granting the waiver, such as diminution of competition. *Id.*

¹³² The Commission reviews the CMRS spectrum cap biennially, pursuant to Section 11 of the Communications Act, as amended. *See* 47 U.S.C. § 161.

¹³³ *See Biennial CMRS Spectrum Cap Order* at ¶ 26.

a record on the specific proposals to open eligibility for this spectrum and otherwise revise the C and F block rules for the benefit of consumers and the economy.

V. PROCEDURAL MATTERS AND ORDERING CLAUSES

A. *Ex Parte* Rules – Permit-But-Disclose Proceeding

52. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206.

B. Initial Regulatory Flexibility Analysis

53. As required by the Regulatory Flexibility Act ("RFA"), the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible impact on small entities of the proposals and tentative conclusions set forth in the *Further Notice of Proposed Rulemaking* ("Notice") in WT Docket No. 97-82. The IRFA is set forth as Appendix A. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the *Notice*. In accordance with the RFA,¹³⁴ the Commission will send a copy of this *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.¹³⁵

C. Initial Paperwork Reduction Act Analysis

54. This *Notice* contains neither a new nor a modified information collection.

D. Comment Dates

55. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before **June 22, 2000**, and reply comments on or before **June 30, 2000**. 47 C.F.R. §§ 1.415, 1.419. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

56. Comments filed through ECFS may be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Comments filed through the ECFS may be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed; however, if multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. When completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should

¹³⁴ See 5 U.S.C. § 603. The RFA has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-21, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

¹³⁵ See 5 U.S.C. § 603(a).

include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

57. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. A courtesy copy should be delivered to Audrey Bashkin, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4A-664, Washington, DC 20554. Parties should reference WT Docket No. 97-82 in their comments. Pursuant to Section 1.1200(a) of the Commission's rules, presentations on issues in this proceeding will be prohibited after 7 p.m., **July 12, 2000**, until release of the Commission's order dealing with those issues. 47 C.F.R. §§ 1.1200(a) and 1.1202(a).

58. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center of the Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554.

E. Further Information

59. For further information concerning this *Notice*, contact Audrey Bashkin, Auctions and Industry Analysis Division, (202) 418-0660, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, DC 20554.

F. Ordering Clauses

60. Accordingly, IT IS ORDERED THAT, pursuant to Sections 4(i), 309(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 303(r), and 309(j), this *Further Notice of Proposed Rulemaking* is hereby ADOPTED.

61. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION


Magalie Roman Salas WFC
Secretary

APPENDIX A – ENTREPRENEUR ELIGIBILITY ISSUES**A-1. Comments Filed in Response to Public Notice, DA 00-145, 00-191 and 00-271 (Petitions of SBC Communications, Inc. and Nextel Communications, Inc.)****Comments**

1. Alaska Digitel, LLC, Poplar PCS, LLC, and Eldorado Communications, LLC (“Alaska Digitel”)
2. Alpine PCS, Inc. (“Alpine”)
3. American Wireless, LLC (“American Wireless”)
4. AT&T Wireless Services, Inc. (“AT&T”)
5. Bell Atlantic Mobile, Inc. (“Bell Atlantic”)
6. BellSouth Corporation (“BellSouth”)
7. Burst Networks (“Burst”)
8. Carolina PCS I Limited Partnership (“Carolina”)
9. Cellular Telecommunications Industry Association (“CTIA”)
10. Cook Inlet Region, Inc. (“CIRI”)
11. Council Tree Communications, LLC (“Council Tree”)
12. CT Communications, Inc. (“CT”)
13. D&E Communications, Inc. (“D&E”)
14. Devon Mobile Communications, L.P. (“Devon”)
15. Ericsson Inc. (“Ericsson”)
16. Georgetown Partners, LLC (“Georgetown”)
17. GTE Service Corporation (“GTE”)
18. Integrated Communications Group, Corp. (“ICG”)
19. Leap Wireless International, Inc. (“Leap”)
20. National Telephone Cooperative Association (“NTCA”)
21. NextWave Personal Communications Inc. (“NextWave”)
22. Northcoast Communications, LLC (“Northcoast”)
23. Office of Advocacy of the United States Small Business Administration (“Advocacy”)
24. Omnipoint Corporation (“Omnipoint”)
25. ONYX Telecommunications, LLC (“ONYX”)
26. OPM Auction Co. (“OPM”)
27. Rural Cellular Association (“RCA”)
28. Rural Telecommunications Group and the Organization for the Promotion and Advancement of Small Telephone Companies (“RTG”)
29. SBC Communications Inc. (“SBC”)
30. SMR Group, LLC (“SMR”)
31. Sprint Spectrum L.P. d/b/a Sprint PCS (“Sprint”)
32. TeleCorp PCS, Inc. (“TeleCorp”)
33. Telephone and Data Systems, Inc. (“TDS”)
34. Tritel Communications, Inc. (“Tritel”)
35. US West Wireless, LLC (“US West”)
36. UTStarcom (“UTStarcom”)
37. VoiceStream Wireless Corporation (“VoiceStream”)
38. Wireless Operating Company, Inc (“WOC”)

Reply Comments

1. Alaska Digitel, LLC, Poplar PCS, LLC, and Eldorado Communications, LLC ("Alaska Digitel")
2. Alpine PCS, Inc. ("Alpine")
3. American Wireless, LLC ("American Wireless")
4. AT&T Wireless Services, Inc. ("AT&T")
5. C Block Coalition ("Coalition")
6. Carolina PCS I Limited Partnership ("Carolina")
7. Chadmoore Wireless Group, Inc. ("Chadmoore")
8. CLEAR TALK ("Cleartalk")
9. CT Communications, Inc. ("CT")
10. Entertainment Unlimited, Inc. ("Entertainment Unlimited")
11. Georgetown Partners, LLC ("Georgetown")
12. GTE Service Corporation ("GTE")
13. Nextel Communications, Inc. ("Nextel")
14. Northcoast Communications, LLC ("Northcoast")
15. Noverr Publishing Inc. ("NPI")
16. Office of Advocacy of the United States Small Business Administration ("Advocacy")
17. Official Committee of Unsecured Creditors of NextWave Telecom Inc. ("OCUC of NextWave")
18. OPM Auction Co. ("OPM")
19. Personal Communications Industry Association ("PCIA")
20. Polycell Communications, Inc. ("Polycell")
21. SBC Communications Inc. ("SBC")
22. TeleCorp PCS, Inc. ("TeleCorp")
23. Tritel Communications, Inc. ("Tritel")
24. US West Wireless, LLC ("US West")
25. VoiceStream Wireless Corporation ("VoiceStream")

A-2. Oppositions and Other Pleadings Filed in Response to Public Notice, DA 00-760 (US West/Sprint Spectrum Petition)**Oppositions**

1. Alaska Digitel, LLC ("Alaska Digitel"), Poplar PCS, LLC ("Poplar"), and Eldoro Communications, LLC ("Eldorado") (comment)
2. Alpine PCS, Inc. ("Alpine") (comment)
3. American Wireless Licensing Group, LLC ("American Wireless")
4. AT&T Wireless Services, Inc. ("AT&T") (comment)
5. Burst Networks, Inc. ("Burst")
6. Carolina PCS I Limited ("Carolina")
7. Cellular Telecommunications Industry Association ("CTIA") (comment)
8. ComScape Telecommunications, Inc. ("ComScape")
9. Cook Inlet Region, Inc. ("CIRI")
10. GTE Service Corporation ("GTE")
11. Leap Wireless International, Inc. ("Leap")
12. Nextel Communications, Inc. ("Nextel") (comment)
13. NextWave Personal Communications, Inc. and NextWave Power Partners, Inc. ("NextWave")
14. Northcoast Communications, LLC ("Northcoast")
15. OPM Auction Co. ("OPM")
16. Personal Communications Industry Association ("PCIA")

17. TeleCorp PCS, Inc. ("TeleCorp") and Tritel Communications, Inc. ("Tritel")
(comment)
18. United States Small Business Administration Office of Advocacy
(“Advocacy”) (comment)
19. Verizon Wireless (“Verizon”) (comment)
20. VoiceStream Wireless Corporation (“VoiceStream”)

A-3. Petitions Filed in Response to Public Notice, DA 00-145, 00-191 and 00-271 (SBC Communications, Inc. and Nextel Communications, Inc. Petitions) and Public Notice, DA 00-760 (US West/Sprint Spectrum Petition)

Petitions Filed in Response to Public Notice, DA 00-145, 00-191 and 00-271

1. AT&T Wireless Services, Inc. (“AT&T”)
(Petition for Waiver and Expedited Action)*
2. Bell Atlantic Mobile, Inc. (“Bell Atlantic”)
(Petition for Limited Forbearance)*
3. BellSouth Corporation (“BellSouth”)
(Petition for Waiver and Expedited Action)*
4. Cellular Telecommunications Industry Association (“CTIA”)
(Petition for Rule Making)
5. GTE Service Corporation (“GTE”)
(Petition for Waiver and Declaratory Ruling)*
6. National Telephone Cooperative Association (“NTCA”)
(Expedited Request for Extension of Deadline)
7. Office of Advocacy of the United States Small Business Administration
(“Advocacy”) (Petition for Waiver)
8. Rural Cellular Association (“RCA”)
(Request for Extension of Time)
9. Sprint Spectrum L.P. d/b/a Sprint PCS (“Sprint”)
(Petition for Waiver)
10. US West Wireless, LLC (“US West”)
(Petition for Waiver)

Petition Filed in Response to Public Notice, DA 00-760

1. Verizon Wireless (“Verizon”)
(Petition for Clarification or Reconsideration)

Petition primarily concerns spectrum cap issues.

A-4. Ex Parte Communications and/or Late Filed Comments in Response to Public Notice, DA 00-145, 00-191 and 00-271 (SBC Communications, Inc. and Nextel Communications, Inc. Petitions) and Public Notice, DA 00-760 (US West/Sprint Spectrum Petition)

1. 3G Network Holdings (“3G Network”)
2. AirTouch Communications, Inc. (“AirTouch”)

3. Alpine PCS, Inc. ("Alpine")
4. American Wireless, LLC ("American Wireless")
5. AT&T Wireless Services, Inc. ("AT&T")
6. Bell Atlantic Mobile, Inc. ("Bell Atlantic")
7. BellSouth Cellular Corp. ("BellSouth")
8. Burst Networks, Inc. ("Burst")
9. Carolina PCS I Limited Partnership ("Carolina")
10. Cook Inlet, Inc. ("CIRI")
11. Dobson Communications Corporation ("DCC")
12. GTE Wireless Inc. ("GTE")
13. Integrated Communications Group ("ITG")
14. Leap Wireless International, Inc. ("Leap")
15. Media Access Project ("MAP")
16. Michael Kurtis of Kurtis & Associates on Behalf of Edwards, Helms, Hollings, and Thurmond
17. Nextel Communications, Inc. ("Nextel")
18. NextWave Telecom, Inc. ("NextWave")
19. Northcoast Communications, LLC ("Northcoast")
20. Paula Ford of the Minority Staff of the Senate Commerce Committee ("Ford")
21. Personal Communications Industry Association ("PCIA")
22. Representative Bennie G. Thompson
23. Representative Bob Clement
24. Representative Bob Riley
25. Representative Bobby L. Rush
26. Representative Brian Bilbray
27. Representative Charles Pickering
28. Representative Ciro D. Rodriguez
29. Representative Jay Dickey
30. Representative John J. Duncan
31. Representative John D. Dingell
32. Representative John R. Kasich
33. Representative Major R. Owens
34. Representative Ron Packard
35. Representative Ronnie Shows
36. Representative Tom Udall
37. Representative W.J. "Billy" Tauzin
38. Representative William L. Clay
39. Representative Zach Wamp
40. Representatives, James E. Clyburn, William J. Jefferson, Stephanie Tubbs Jones, Barbara Lee, Juanita Millender-McDonald, Bobby L. Rush, Edolphus Towns, and Albert Russell Wynn
41. Representatives Randy Cunningham & Duncan L. Hunter
42. Representatives Rick Boucher, Eliot L. Engel, Ralph M. Hall, Steve Largent, Charles Pickering, Ronnie Shows, and Bennie G. Thompson
43. Roseville PCS, Inc. ("Roseville")
44. Rural Telecommunications Group ("RTG")
45. Senator Barbara A. Mikulski and Paul S. Sarbanes
46. Senator Barbara Boxer
47. Senator Carl Levin
48. Senator Charles S. Robb
49. Senator Christopher S. Bond
50. Senator Daniel K. Inouye

51. Senator Judd Gregg
52. SBC Communications, Inc. ("SBC")
53. Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint")
54. TeleCorp PCS, Inc. ("TeleCorp")
55. Telepak, Inc. (Telepak")
56. Thomas Gutierrez of Lukas, Nace, Gutierrez & Sachs
57. TLA Spectrum, LLC ("TLA")
58. Tritel Communications, Inc. ("Tritel")
59. US West Wireless, LLC ("US West")
60. Verizon Wireless ("Verizon")
61. VoiceStream Wireless Corporation ("VoiceStream")

APPENDIX B – SPECTRUM CAP ISSUES

B-1. Comments and Petitions Filed in Response to Public Notice, DA 00-318 (Petitions of AT&T Wireless Services, Inc., BellSouth Corporation, and Bell Atlantic Mobile, Inc.)**Comments**

1. Alaska Digital, LLC (“Alaska Digital”)
2. American Wireless, LLC (“American Wireless”)
3. Carolina PCS I Limited Partnership (“Carolina”)
4. Cook Inlet Region, Inc. (“CIRI”)
5. CT Communications, Inc. (“CT”)
6. Cellular Telecommunications Industry Association (“CTIA”)
7. Eldorado Communications, LLC (“Eldorado”)
8. Georgetown Partners, LLC (“Georgetown”)
9. GTE Service Corporation (“GTE”)
10. Leap Wireless International, Inc. (“Leap”)
11. National Telephone Cooperative Association (“NTCA”)
12. Nextel Communications (“Nextel”)
13. NextWave Personal Communications, Inc. (“NextWave Personal”) and
NextWave Power Partners, Inc. (“NextWave Power”)
14. Personal Communications Industry Association (“PCIA”)
15. Poplar PCS, LLC (“Poplar”)
16. Rural Cellular Association (“RCA”)
17. Rural Telecommunications Group (“RTG”)
18. SBC Communications, Inc. (“SBC”)
19. SMR Group, L.C. (“SMR”)
20. Sprint Spectrum L.P. d/b/a Sprint PCS (“Sprint”)
21. TeleCorp PCS, Inc. (“TeleCorp”)
22. Tritel Communications, Inc. (“Tritel”)
23. VoiceStream Wireless Corporation (“VoiceStream”)

Reply Comments

Alaska Digital, LLC (“Alaska Digital”)

1. Alpine PCS, Inc. (“Alpine”)
2. American Wireless, LLC (“American Wireless”)
3. AT&T Wireless Services, Inc. (“AT&T”)
4. Bell Atlantic Mobile, Inc. (“Bell Atlantic”)
5. BellSouth Corporation (“BellSouth”)
6. CT Communications, Inc. (“CT”)
7. Eldorado Communications, LLC (“Eldorado”)
8. GTE Service Corporation (“GTE”)
9. Leap Wireless International (“Leap”)
10. Northcoast Communications, LLP (“Northcoast”)
11. Poplar PCS, LLC (“Poplar”)
12. TeleCorp PCS, Inc. (“TeleCorp”)
13. Tritel Communications, Inc. (“Tritel”)

Petitions

1. AT&T Wireless Services, Inc. ("AT&T") (Petition for Waiver)
2. Bell Atlantic Mobile, Inc. ("Bell Atlantic") (Petition for Limited Forbearance)
3. BellSouth Corporation ("BellSouth") (Petition for Waiver)
4. GTE Service Corporation ("GTE") (Petition for Waiver and Declaratory Ruling)

APPENDIX C – INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (“RFA”),¹ the Commission has prepared an Initial Regulatory Flexibility Analysis (“IRFA”) of the possible economic impact on small entities of the rules proposed in the Further Notice of Proposed Rulemaking (“Notice”) in WT Docket No. 97-82. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.² In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives, of the Proposed Rules:

Section 309(j) of the Communications Act directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities.⁴ Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use.⁵ To date, the Commission has received numerous requests to waive, modify, or eliminate certain of the C and F block auction and service rules for C and F block broadband Personal Communications Services (“PCS”) licenses. As discussed more fully in Section E of this IRFA, *infra*, these requests seek, among other things, modification of the C and F block entrepreneur eligibility requirements for the upcoming C and F block auction, reconfiguration of available 30 MHz C block licenses, and adoption of an alternative bidding plan. Upon consideration of these numerous requests, the Commission has tentatively concluded that it is in the public interest to revise certain aspects of the C and F block rules. This Notice sets forth the Commission’s proposals and tentative conclusions concerning possible revisions to the rules governing the C and F block spectrum. The Commission believes that this Notice will provide the Commission with an opportunity to develop a record on the specific proposals to open eligibility for this spectrum and otherwise revise the C and F block rules for the benefit of consumers and the economy. In addition, the Commission believes that the tentative conclusions and proposals set forth in this Notice help meet the goals and objectives of section 309(j), and promote competition while maintaining the fair and efficient implementation of the auctions program. Accordingly, the Commission seeks comment on all proposals, alternatives, tentative conclusions, and other issues described in the Notice; and the impact that such proposals, alternatives, tentative conclusions, and other issues may have on small entities.

¹ 5 U.S.C. § 603. The RFA has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996.

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ 47 U.S.C. § 309(j)(3)(B).

⁵ *Id.* §§ 309(j)(3)(A),(C)

B. Legal Basis:

This action is authorized under Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 309(j).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply:

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.⁶ Generally, the RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁷ The term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities.⁸ Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration ("SBA").⁹ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹⁰ Nationwide, as of 1992, there were approximately 275,801 small organizations.¹¹ "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."¹² As of 1992, there were approximately 85,006 local governments in the United States.¹³ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent,

⁶ 5 U.S.C. § 603(b)(3).

⁷ *Id.* § 601(6).

⁸ *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.

⁹ 15 U.S.C. § 632.

¹⁰ 5 U.S.C. § 601(4).

¹¹ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation data under contract to the Office of Advocacy of the U.S. Small Business Administration).

¹² 5 U.S.C. § 601(5).

¹³ U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

have populations of fewer than 50,000.¹⁴ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

The possible rule changes described in the *Notice* affect all small entities that choose to participate in the upcoming auction of C and F block spectrum and other future auctions of C and F block spectrum, including small businesses currently holding C and F block licenses and other small businesses that may acquire licenses through the auction. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has auctioned licenses in each block. Frequency blocks C and F have been designated by the Commission as “entrepreneurs’ blocks,” and participation in auctions of C and F block licenses is limited to entities qualifying under the Commission’s rules as entrepreneurs. The Commission’s rules define an entrepreneur as an entity, together with its affiliates, having gross revenues of less than \$125 million and total assets of less than \$500 million at the time the FCC Form 175 application is filed. For blocks C and F, the Commission has defined “small business” as a firm, together with its affiliates, that had average gross revenues of not more than \$40 million in the three previous calendar years,¹⁵ and “very small business” has been defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹⁶ These definitions have been approved by the SBA.¹⁷

On May 6, 1996, the Commission concluded the first broadband PCS C block auction.¹⁸ On July 16, 1996, the second C block auction closed.¹⁹ On January 14, 1997, the broadband PCS D, E, and F block auction closed.²⁰ Ninety bidders (prior to any defaults by winning bidders) won 493 C block licenses and 88 bidders won 491 F block licenses. Small businesses placing high bids in these C and F block auctions were eligible for bidding credits and installment payment plans. On April 15, 1999,

¹⁴ *Id.*

¹⁵ See 47 C.F.R. § 24.720(b)(1).

¹⁶ See *id.* § 24.720(b)(2).

¹⁷ See Letter to Amy J. Zoslov, Chief, Auctions & Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, U.S. Small Business Administration, dated December 2, 1998. See also *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5581-5584; 47 C.F.R. § 24.720(b).

¹⁸ “Entrepreneurs’ C Block Auction Closes,” *Public Notice*, DA 96-716 (released May 8, 1996).

¹⁹ “Entrepreneurs’ C Block Reauction Closes,” *Public Notice*, DA 96-1153 (released July 17, 1996).

²⁰ FCC News, Broadband PCS, D, E, and F Block Auction Closes, No. 71744 (released Jan. 14, 1997).

Auction No. 22, which included 347 C and F block licenses, closed.²¹ On January 12, 2000, the Wireless Telecommunications Bureau announced the Commission's intention to auction C and F block PCS licenses on July 26, 2000. The auction is currently scheduled to include ninety-three 30 MHz C block licenses, twenty-one 15 MHz C block licenses, and forty 10 MHz F block licenses. For purposes of our evaluations and conclusions in this IRFA, we assume that all of the original 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by this *Notice*, are small entities. In addition to the 178 original small business licensees that may participate in the auction of the C block licenses, a number of additional small business entities may seek to acquire licenses through auction; thus, these business entities would be affected by these rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements:

At this time, the Commission does not anticipate the imposition of new reporting, recordkeeping, or other compliance requirements as a result of this Notice. We seek comment on this tentative conclusion. Auction participants will need to follow the standard procedural rules used for broadband PCS spectrum auctions, including application and payment rules.²²

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. § 603.

The Commission tentatively concludes that it is in the public interest to revise certain aspects of the C and F block rules to encourage participation by small businesses while at the same time helping to ensure the best use of spectrum through the competitive bidding process.

Reconfigure C Block Spectrum Size: The Commission tentatively concludes it will reconfigure each 30 MHz C block license available in future broadband PCS auctions into three 10 MHz C block licenses. The Commission believes that by increasing the number of available licenses through this reconfiguration, taken together with the Commission's proposals to lift certain of our eligibility requirements, the Commission will promote wider auction participation and license distribution in

²¹ "C, D, E, and F Block Broadband PCS License Auction Closes," *Public Notice*, DA 99-757 (released April 20, 1999).

²² See generally 47 C.F.R. Part 1, Subpart Q; Part 24.

accordance with the goals of Section 309(j) of the Communications Act.²³ Small bidders should find bidding for 10 MHz licenses more affordable, while large bidders should enjoy greater flexibility in tailoring their bidding to their business plans without running afoul of the spectrum cap. The Commission also seeks comment on whether a different configuration would be more appropriate to provide meaningful opportunities for potential bidders, including new entrants into particular markets.

Eliminate Eligibility Restrictions for Certain Licenses in Tiers: The Commission proposes to remove the entrepreneur eligibility restrictions for some, but not all, licenses available in Auction No. 35 and in future C and F block auctions. Based on the demand for spectrum to satisfy congestion, new technology and competitive needs, the Commission tentatively concludes that it would serve the public interest to make some additional spectrum available to all interested bidders. In light of the Commission's commitment to providing meaningful opportunities for entrepreneurs, the Commission seeks comment on proposals to lift the entrepreneur eligibility requirements for some of the licenses available in Auction No. 35 and future auctions, which vary in the amount of spectrum that would remain set-aside according to the size of both the available licenses and the markets. The Commission tentatively concludes that it will divide BTAs into two tiers according to population size of the BTA. "Tier 1" would comprise BTAs at and above a 2.5 million population threshold; "Tier 2" would comprise BTAs below that population threshold. For available 30 MHz C block licenses, the Commission tentatively concludes to allow "open" bidding for two of the three 10 MHz C block licenses in Tier 1, and one of the three 10 MHz C block licenses in Tier 2. The Commission also seeks comment on whether there should be "open" bidding for all three of the 10 MHz licenses in Tier 1, and two of the three in Tier 2. With respect to available F block licenses, the Commission seeks comment on eliminating the eligibility requirements, or, alternatively, applying a tiered approach or retaining the existing eligibility rules. Finally, the Commission also tentatively concludes it will allow "open" bidding for all available 15 MHz C block licenses, which have previously been auctioned but not sold. These alternatives would affect the configuration and set-aside of spectrum. We seek comment on the impact of these alternatives on small businesses.

Retain Current License Grouping for Bidding in Auction: The Commission tentatively concludes to take bids on each license separately in Auction No. 35 on a simultaneous multiple round basis as the Commission has previously done in the past. The Commission believes that bidding for each license separately is unlikely to preclude carriers from aggregating licenses on a nationwide or regional basis, and at the same time will provide carriers that have intense spectrum needs in a particular market the opportunity to compete for licenses as well.

²³ See 47 U.S.C. § 309(j)(3)(B).

Grandfather Exception: The Commission seeks comment on whether the grandfather eligibility exception should be revised or clarified. The Commission also tentatively concludes that upon the merger of two entities, each of which is eligible for the “grandfather” exception, the exception extends to the resulting entity; but that, upon the merger of two entities, only one of which is eligible for the “grandfather” exception, the exception does not extend to the resulting entity.

Revise the Bidding Credits Available for Auction No. 35: For those licenses that are not subject to eligibility restrictions, the Commission seeks comment on whether to increase bidding credits for small and very small businesses, and consortia thereof, to 25 and 40 percent, respectively, or to retain existing bidding credit levels. We expect that this departure from previous procedure will provide small businesses with a meaningful opportunity to compete in an open auction.

Alter the Transfer Requirements for Certain Licenses: The Commission proposes to modify the Commission’s transfer requirements to correspond to the Commission’s proposed changes in the eligibility requirements, and to encourage rapid construction of C and F block systems. Specifically, the Commission tentatively concludes that C and F block licenses won pursuant to open bidding at Auction No. 35, or any future open auction for such spectrum, would not be subject to a transfer holding rule. For licenses won in closed bidding in any C or F block auction, the Commission seeks comment on a proposal that will allow a licensee to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee’s completion of its first construction benchmark, whether or not it takes the full five years allowed by the rules. The Commission also seeks comment on whether it should evaluate a licensee’s compliance with construction requirements on a system-wide basis.

Eliminate the License Cap: The Commission proposes to remove Section 24.710 from the Commission’s rules which prohibits an auction applicant from winning more than 98 C and F block licenses. When this rule was established, the license cap was intended to facilitate a fair distribution of licenses within the C and F blocks. The Commission has achieved this objective; moreover, the Commission’s proposal to reconfigure the available 30 MHz C block licenses would create additional C block licenses, while the Commission’s proposal to eliminate the eligibility restrictions would increase the chances of C and F block licenses being won by a variety of entities.

Retain the Spectrum Cap: The Commission tentatively concludes that it should not grant the petitions seeking waiver of, or forbearance from, the CMRS spectrum cap rules and, accordingly, it would apply the spectrum cap to licenses of PCS C and F block spectrum to be auctioned in Auction 35. The Commission’s proposal to revise the rules pertaining to the PCS C and F block spectrum helps ease the impact of the cap in this auction, and thereby renders cap relief unnecessary.²⁴

²⁴ In the Commission’s recent *700 MHz Band Order*, issued in January 2000, the Commission determined not to apply a spectrum cap to the 700 MHz band spectrum in large measure because the Commission determined that the CMRS spectrum cap helped ensure that a competitive structure in the CMRS marketplace was being maintained. *See* Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the (continued....)

Section 309(j) of the Communications Act directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities.²⁵ Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use.²⁶ The Commission believes that the proposals, alternatives, and tentative conclusions described in this Notice promote these goals while maintaining the fair and efficient execution of the auctions program. The Commission, therefore, seeks comment on all issues, proposals, tentative conclusions, and alternatives described in the Notice, and the impact they may have on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules:

None.

(Continued from previous page) _____

Commission's Rules, WT Docket No. 99-168, *First Report and Order*, 15 FCC Rcd 476, 498, ¶ 53 (2000) ("700 MHz Band Order").

²⁵ 47 U.S.C. § 309(j)(3)(B).

²⁶ *Id.* §§ 309(j)(3)(A), (C).

SEPARATE STATEMENT OF COMMISSIONER MICHAEL K. POWELL, CONCURRING

In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Further Notice of Proposed Rulemaking*

I concur with the issuance of this *Further Notice* to explore changes in the eligibility rules for the re-auction of this valuable and highly sought-after PCS spectrum. I support the need to reexamine our "entrepreneur's block" spectrum set-aside rules because, among other reasons, there have been a lot of changes since we first embarked on this auction experiment. However, I am open to all options and considerations for the next auction of these licenses. I am not particularly impressed by labels attached to the specific proposals (i.e., those on which we "seek comment," "propose" or "tentatively conclude") in this *Further notice* because I think all options are on the table and I would not be predisposed to any particular outcome at this time.

I am very dismayed that this *Further Notice* proposes to reject out-of-hand any modification or elimination of the CMRS spectrum cap. Even since we last addressed this issue, many changes in the marketplace have occurred that require the immediate reexamination of this artificial barrier (like the entrepreneur's block eligibility restrictions) to the acquisition of spectrum. If we are not going to adequately address it in this proceeding (despite the fact that parties have asked us to), I strongly urge action on the reconsideration petitions from the last review and the conclusion of the year 2000 biennial review before this re-auction takes place. In the meantime, or if my plea to my colleagues goes unheeded, I would also encourage spectrum-constrained licensees to make a compelling effort to justify their need to exceed the cap or other reasons it should be waived.